

OPINION AND AWARD
IN INTEREST ARBITRATION PROCEEDINGS PURSUANT TO
SAN JOSE CITY CHARTER SECTION 1111

In the Matter of:)
)
CITY OF SAN JOSE)
)
Employer)
)
and)
)
INTERNATIONAL ASSOCIATION OF)
FIREFIGHTERS, LOCAL 230, AFL-CIO)
)
Union)
_____)

OPINION OF THE CHAIR

C S M C S Case No ARB-04-3025

ARBITRATION BOARD MEMBERS:
Jerilou H. Cossack, Chair
Nora Frimann, City-Appointed Member
Randy Sekany, Union-Appointed Member

APPEARANCES:

On behalf of the City: Charles D. Sakai, Esquire
Renne Sloan Holtzman Sakai
350 Sansome Street, Suite 300
San Francisco, CA 94104-1304

On behalf of the Union: Christopher E. Platten, Esquire
Wylie McBride Platten & Renner
2125 Canoas Garden Ave., Suite 120
San Jose, CA 95125

OPINION

An Arbitration Board was convened pursuant to San Jose City Charter Section 1111, when the City of San Jose and the International Association of Firefighters, Local 230, were unable to reach agreement on the wages and terms and conditions of employment for a new collective bargaining agreement. Arbitrator Jerilou H. Cossack was selected as the neutral chairperson, Chief Trial Attorney Nora Frimann as the City-appointed member, and Union President Randy Sekany as the Union-appointed member. The neutral chairperson was selected from a list provided by the CALIFORNIA STATE MEDIATION AND CONCILIATION SERVICE.

At the outset of the proceedings, depending on exactly how one counted, there were between 36 and 39 outstanding unresolved issues. Hearings were held in San Jose, California, on November 20 and 21, December 4, 5 and 6, 2006, January 3, 4 and 5 and February 8, 2007. Interspersed among the formal hearing dates were several mediation sessions which resulted in the withdrawal of some proposals and achievement of tentative agreements on several others.¹ Both parties had full opportunity to present documentary and testimonial evidence and to examine and cross-examine witnesses. There remained 30 outstanding issues at the close of the formal evidentiary proceedings.

On February 13, 2007 both parties submitted their final proposals on the issues in dispute. On March 22, 2007, upon receipt of both briefs, this matter was taken under consideration. The final proposals of the parties as submitted were identical on two issues: Issue 4, EMT Pay, and

¹ Tentative agreements were reached concerning Article 26.1.2 (Sick Leave Usage), Article 28.6 (Employee Paid Plan Changes for Retirees), Article 29.5 (Hydrant Marker Maintenance), Article 37.2 (Wellness/Fitness Program Labor Management Committee), Article 40 (Substance Abuse Program), Article 1 (Term), and Articles 31.1 and 31.2 (Bereavement Leave).

Issue 6, Holiday in Lieu Pay. Prior to the completion of the Arbitration Board (hereafter Board) deliberations, the parties were able to reach accord on two additional issues: Issue 21, Establish Labor Management Committee on DROP; and Issue 8, Support Paramedics. There remain 26 issues in dispute.

The Charter

San Jose City Charter Section 1111 governs these proceedings. It states, in pertinent part,

At the conclusion of the arbitration hearings, the Arbitration Board shall direct each of the parties to submit, within such time limit as the Board may establish, a last offer of settlement on each of the issues in dispute. The Arbitration Board shall decide each issue by majority vote by selecting whichever last offer of settlement on that issue it finds most nearly conforms with those factors traditionally taken into consideration in the determination of wages, hours, and other terms and conditions of public and private employment, including, but not limited to, changes in the average consumer price index for goods and services, the wages, hours, and other terms and conditions of employment of other employees performing similar services, and the financial condition of the City and its ability to meet the cost of the award.

After reaching a decision, the Arbitration Board shall mail or otherwise deliver a true copy of its decision to the parties. The decision of the Arbitration Board shall not be publicly disclosed and shall not be binding until ten (10) days after it is delivered to the parties. During that ten-day period the parties may meet privately, attempt to resolve their differences, and by mutual agreement amend or modify any of the decisions of the Arbitration Board. At the conclusion of the ten-day period, which may be extended by mutual agreement between the parties, the decision of the Arbitration Board together with any amendments or modifications agreed to by the parties shall be publicly disclosed and shall be binding upon the parties.

Preliminary Statement

Charter Section 1111 provides general guidance to the Board in its evaluation of the various proposals submitted for resolution, but expresses no preference for one factor over another. It invites the Board to consider, among other things, comparisons between other groups of employees who perform similar services. Generally when making such comparisons,

arbitrators look to external comparisons between other jurisdictions and internal comparisons within an employer's own workforce

Each party in these proceedings has proposed external comparison with other groups. The Union has focused primarily on what is known as the "Big Bay Four," consisting, in addition to the City of San Jose, of the City of Oakland, the City and County of San Francisco, and the County of Contra Costa. The Union also looks to other departments in Santa Clara County which serve populations greater than 100,000, i.e., Santa Clara City and Santa Clara County. The Union insists that only these jurisdictions have a sufficient population and significantly complex duties to warrant comparison. The Union also insists jurisdictions in southern California are not appropriately comparable because economic and demographic factors differ substantially between northern and southern California

The Employer, on the other hand, does not dispute the relevance of the "Big Bay Four," but insists that universe is too small to provide valid comparables and the appropriate comparison must include jurisdictions geographically proximate to San Jose, or, alternatively, other jurisdictions throughout the state with similar service populations. The Employer raises the same objections to the Union's second proffered comparable universe consisting of the two jurisdictions in Santa Clara county serving populations of more than 100,000.

As arbitrators Bogue, Brand and Goldberg before me have opined, there is no completely comparable universe. As will be more fully discussed below with respect to specific matters in dispute, one must balance the dictates of the competing universes with respect to the imperatives of the issue under discussion

By and large, both parties agree the appropriate group for internal comparison is the San Jose police force.

Neither party here has placed any emphasis on changes in the consumer price index (CPI) for goods and services. The wage proposals of both parties exceed changes in the CPI, although the City's proposals are closer than those of the Union.

While the City has not claimed it is unable to pay for the wage and benefit increases sought by the Union, it does contend that they would necessarily curtail the City's ability to fund other programs. The City points to program and staff reductions which occurred following the "dot com bust" and its desire to take advantage of its gradually improving economic condition to make restorations. The Union acknowledges the negative effect of the "dot com bust" on City coffers, but points to substantial and continuing improvement in the City's financial status.

The Charter also requires the Board to select the last offer of one party or the other. The Board cannot modify either party's last offer, nor may the Board devise its own solution to the particular matter in dispute. Thus, while the Board may not think either offer is very desirable, it must select one or the other. The party seeking change in the status quo bears the burden of proof and persuasion.

The various proposals submitted in these proceedings fall into four general categories: compensation, health insurance, retirement, and operations. The discussion which follows will address the proposals submitted in each category.

Discussion

Category 1: Compensation

ISSUE 1: GENERAL WAGE INCREASE (Article 5.1)

City Proposal

Effective ~~June 25, 2000~~ July 3, 2005, all persons represented by the IAFF shall receive a wage increase of ~~6% and a special market adjustment of 2.4% for a total increase of 8.4%~~ 1.5 %.

Effective ~~June 24, 2004~~ July 2, 2006, all persons represented by the IAFF shall receive a wage increase of ~~6% and a special market adjustment of 2.0% for a total increase of 8.0%~~ 5.70%.

Effective ~~June 23, 2002~~ July 1, 2007, all persons represented by the IAFF shall receive a wage increase of ~~6% and a special market adjustment of 1.0% for a total increase of 7.0%~~ 5.70%.

Effective June 29, 2008, all persons represented by the IAFF shall receive a wage increase of 3.75%.

Any general wage increase during the term of the MOU will be reduced by the cost of any additional premium pay for Special Operations effective on or after the first pay period of that fiscal year.

The wage increases and ~~special market adjustments~~ are approximate in accordance with current City of San Jose payroll tables. Salary ranges are attached hereto.

Union Proposal

Effective ~~June 25, 2000~~ July 3, 2005, all persons represented by the IAFF shall receive a wage increase of ~~6% and a special market adjustment of 2.4% for a total increase of 8.4%~~ 1.5%.

Effective ~~June 24, 2004~~ July 2, 2006, all persons represented by the IAFF shall receive a wage increase of ~~6% and a special market adjustment of 2.0% for a total increase of 8.0%~~ 5.7%.

Effective ~~June 23, 2002~~ July 1, 2007, all persons represented by the IAFF shall receive a wage increase of ~~6% and a special market adjustment of 1.0% for a total increase of 7.0%~~ 5.7%.

Effective July 1, 2008, all persons represented by the IAFF shall receive a wage increase equal to the greater of 5% or the average of the increases in hourly compensation that are effective during the period from July 1, 2007 through the first payroll period of Fiscal Year 2008-2009 for the top step firefighter rank for firefighters employed by Oakland, San Francisco and Contra Costa County as expressed on a cost per hour basis. Cost per hour basis will be defined and calculated as follows: all cash compensation received for the first pay period of July, 2008, including, but not limited to, (1) base monthly salary, (2) uniform allowance, (3) holiday pay, (4) EMT pay, (5) Employee Paid Member Contribution (EPMC) for employee's pension, (6) FLSA pay received for regularly scheduled work, and (7) any other compensation for regularly schedule work as shown and calculated in Union Exhibit 5A and 5D attached hereto, divided by hours worked (i.e., scheduled hours less vacation hours).

~~The wage increases, and special market adjustments are approximate in accordance with current City of San Jose payroll tables. Salary ranges are attached hereto as "Exhibit I, II, and III".~~

Positions of the Parties

The City. The City has a longstanding history of using two survey universes: Bay Area jurisdictions with a population of over 100,000 and the 10 Largest California Cities. These survey universes strongly reflect the City's labor market.

The Union's Santa Clara County universe is different than any of the universes the Union has used in the past and lacks a logical basis. This is the first time the Union has presented a two-jurisdiction Santa Clara County universe and, as such, suffers the fatal flaw of inadequate sample size. Similarly, the Union's "Big Bay Four" survey is too small to be of value. While the City agrees with the Union that the three largest fire protection agencies in Northern California - San Francisco, Oakland, and Contra Costa County - are appropriate comparables, the small number of survey agencies makes this universe significantly susceptible to corruption by survey agencies which are markedly different than the others in the survey. The Union's "cost per hour" methodology fails to accurately reflect the actual cost per hour worked and omits a number of factors which are extremely important to the cost per hour methodology developed by the Department of Labor.

The long term effects of the "dot com bust" continue to negatively impact the City's ability to deliver services to its residents. Personnel costs make up approximately sixty percent of the City's general fund expenditures. To deal with the budget problems, the City found it necessary to take steps to cut personnel costs, including a hiring freeze, cutting 49 full-time equivalent positions, implementing unpaid furloughs, and limiting the growth of personnel expenses in both wages and benefits. In addition, the City cut significant services, including

library hours, Community Center programs and services, park maintenance, and public works and streets repairs and maintenance. During this time, firefighter wages have significantly exceeded the growth of the General Fund over the term of the expired contract. Moreover, unlike every other City department, including the Police Department, the Fire Department has experienced job growth, adding 19 positions

A one percent increase in wages for the firefighter group is approximately \$900,000. Every one percent increase in firefighter compensation is equivalent to seven bargaining unit positions.

Changes in the Consumer Price Index for goods and services is a factor specifically enumerated in Charter Section 1111. During difficult financial times, firefighter wages have significantly exceeded the growth of the CPI. Since the 1996-1997 fiscal year, the CPI has risen an average of 3.4% per year. Although both the City and Union proposals exceed anticipated CPI changes, the City's proposal is far closer than that of the Union.

Recruitment and retention data are factors "traditionally taken into consideration in the determination of wages, hours, and other terms and conditions of public and private employment." In a recruitment for firefighters in 2006, over 3,000 people applied for 30 available positions. Fifty-four percent of the applicants were from outside the Bay Area. Almost all employees work their entire career for the San Jose Fire Department.

The retroactive 7/2/06 wage increase establishes "status quo" with firefighter top step base wages (including EMT and Holiday in Lieu pay) of \$97,443.35, which places San Jose firefighters above the average in total cash compensation for every historic survey presented in this arbitration. The City's proposal for 2007-2008 and 2008-2009 would result in a compounded

increase of 9.66 percent. The Union's proposal for 2007-2008 and 2008-2009 would result in a compounded increase of at least 10.99 percent -

The Union's salary formula is extremely problematic: It establishes the implication of ongoing status quo; it establishes a comparability universe ("Big Bay Four") to which the parties have never agreed; it utilizes a modified "cost per hour" approach which fails to include substantial cost factors for any organization (all measured by the DOL), including retirement benefits, health benefits, non-regularly scheduled overtime, and sick leave; it abandons the idea of a compensation survey for a survey limited to wage increases; it ignores the substantial 5.7 percent wage increase for bargaining unit members effective July 2, 2007; and it is flawed in that it will capture two (2) wage increases for the survey cities (one in July of 2007 and the second in the "first payroll period" of the 2008-2009 fiscal year).

The Union. The Union's compensation proposals rely on comparisons to the "Big Bay Four" departments and the only other departments in Santa Clara County that, like San Jose, serve populations greater than 100,000. They have been expressly approved in prior interest arbitrations granting the Union's wage proposals by Arbitrator Brand in 1991 and Arbitrator Goldberg in 1994. Both Arbitrators Brand and Goldberg also rejected the relevance of the consumer price index because the parties themselves have historically placed little, if any, emphasis on this factor in determining the appropriate wage increase and wages of firefighters in other jurisdictions were similarly derived without any correlation to this index.

Negotiating directly with then-Mayor Ron Gonzales in 2002, the Union consummated a three year contract for base wage increases totaling 23.4 percent. The Union attained an important market position on a cost-per-hour-worked basis as of the last salary increase effective July 2002: San Jose was ranked third out of the four large departments, and only 2.8 percent

behind the average compensation per hour worked by firefighters in the Big Bay Four; and San Jose was ranked third out all other departments in Santa Clara County, and only 2.52 percent behind the average compensation of the only other two departments, Santa Clara City and Santa Clara County, serving a population of over 100,000.

The Union's proposal not only "backloads" the contract, but more importantly, guarantees that in the final year of the 64 month agreement there will be no slippage in the position of San Jose firefighters vis-à-vis the Big Bay Four. This is especially true where, even under the Union's proposal effective January 2007, San Jose firefighters' compensation still trails the average of the agencies in the two comparable universes.

The City's proposal to reduce the basic wage increase by the cost of the specialty operations pay is both unjustified and insidious. It is unjustified because no other bargaining unit, especially the POA, offsets the premium assignment pay against the base wage. It is insidious because it exposes the City's unvarnished contempt of the bargaining process.

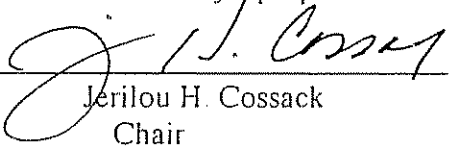


Discussion

The proposals of the parties are identical except for the last year. The Union proposes a radically different method for determining wage rates in that final year than the parties have ever before employed. It would tie the wage rate for San Jose's firefighters to those of the City of Oakland, the City and County of San Francisco, and Contra Costa County. It would establish a formula. As Arbitrators Brand and Goldberg before me have held, the greater the change the greater is the burden of proof to justify it.

While certainly the City of Oakland, the City and County of San Francisco, and Contra Costa County are relevant comparables, and have been used as such by the parties in the past, they have never been awarded the status of exclusive comparables by either the parties or prior

arbitrators. More significant, however, is the injection of a fixed formula into the wage process. While it is true contractual survey formulas are fairly common and to be found in many Bay Area firefighter labor agreements, there is no evidence or indication such formulae were imposed through arbitration rather than being embraced by the parties themselves. Nor is there any evidence the formula proposed by the Union is similar to that of any other jurisdiction. In fact, the Union's formula omits factors traditionally considered relevant in that computation, such as health insurance and pension costs used by the Department of Labor.

Even though the City's proposal to reduce the general wage increase by the cost of any additional Special Operations premium is short-sighted and not supported by any internal or external comparison, it is not sufficiently egregious to require acceptance of the Union's proposal on the general wage increase. The City's proposal is adopted.

		_____
	Jerilou H. Cossack	Date
	Chair	
<input checked="" type="checkbox"/> Concur		_____
<input type="checkbox"/> Dissent	City Panel Member Nora Frimann	Date
<input type="checkbox"/> Concur		_____
<input checked="" type="checkbox"/> Dissent	Union Panel Member Randy Sekany	Date

ISSUE 2: WORKWEEK REDUCTION PAY/WORKWEEK COMPARABILITY
(Article 14.11.1)

City Proposal

Status quo. (Line personnel currently work an average of 56 hours per week and receive pay for 56 hours)

Union Proposal

Effective January 1, 2007 the workweek of the fire suppression shall be reduced to the average workweek of fire suppression in San Francisco, Oakland and Contra Costa County.

In lieu of the workweek required above, for each biweekly pay period the City shall compensate each employee working a 56 hour work schedule eight (8) hours of pay at the employee's hourly rate based upon a 52 hour work schedule (i.e., employee's base annual salary, excluding premium pays, divided by 2704 hours).

This pay shall be deemed to satisfy the City's obligation for FLSA premium pay in each of the current FLSA cycles.

Those employees assigned to a 40-hour workweek shall receive in addition to regular salary an amount equivalent to the percentage increase provided herein to a 56-hour workweek employee.

Non-FLSA overtime shall be paid based upon a 52-hour workweek hourly rate, but shall include all premiums that are currently included in the 56-hour workweek hourly overtime rate of pay.

Positions of the Parties

The City. The 56 hour workweek is the most common workweek in California. The City of Oakland and the City and County of San Francisco are the only two California fire agencies any witness identified as having a different workweek.

Under the Union's proposal, San Jose firefighters would continue to work an average 56 hours per week but would have their salary converted to apply to an average of 52 hours per week and then be paid an additional four hours per week of straight time. This would result in an increase of 5.3% for 56 hour employees who would continue to work an average of 56 hours per week and a 7.7% increase for 40 hour employees who would continue to work 40 hours per week.

The Union has failed to demonstrate that its proposal would actually offset the City's FLSA liability. FLSA requires the City to pay overtime for hours worked in excess of 53 per

week or 212 in a 28 day work period. The Union proposes that under its proposal the City can stop paying overtime for regularly schedule hours worked in excess of 53. It is not clear how this would work. According to the Union, its proposal would lead to an increase in the employee's pay by either 5.3% or 7.7%. In any normal situation, that would lead to an increase in the employee's regular rate of pay for FLSA purposes.

Given that the City's wage proposal already exceeds CPI in the last two years of the agreement, the Union's proposal would simply push wage increases that much further above CPI. Comparability does not support an increase based on the 52 hour workweek assumption; Oakland and San Francisco are the outliers whose impact on the Union's three-jurisdiction is exaggerated by the very small sample size.

An increase of 1% in firefighter pay equates to seven positions. Since this proposal has a cost of up to 7.7% of salary, the proposal is the equivalent of nearly 54 positions.

This proposal should be rejected and the City's proposal of status quo should prevail.

The Union. Firefighters in San Jose work 56 hours per week. Firefighters in the Big Bay Four universe work, on average, 52 hours per week. The cost of this proposal is offset by the average current cost of the Fair Labor Standards Act (FLSA) premium pay earned as a result of regularly scheduled hours.

Under FLSA, firefighters who work more than 53 hours per week are entitled to extra half-time pay for each hour worked beyond 53. A firefighter who works 56 hours per week receives three hours of pay at half the hourly rate (or 1.5 hours of straight time pay) as FLSA premium pay. If firefighters worked every week of every year on a 56 hour workweek, FLSA premium pay would equal approximately 2.67% of salary.

Under Section 7(k) of FLSA regulations:

(1) Cities may establish a work period of 7 to 28 days. In San Jose, the FLSA work period is 28 days. Once the work period has been established, the employer is required to pay FLSA premium pay for all hours worked in excess of the applicable "floor" in the designated work period. There does not have to be any relationship between the designated work period adopted by the employer and the traditional work schedule of employees.

(2) For a designated 28-day work cycle, FLSA premium pay is incurred after 212 hours of work. San Jose firefighters do not work consistently more than 212 hours in every 28-day FLSA cycle due to vacation, sick leave, or job-incurred disability leave. San Jose firefighters receive, on average, 1.3-1.5% of base pay in FLSA premium pay, or \$114 per month.

The Union's workweek comparability proposal would result in a firefighter receiving \$575 per month, or approximately 5.3% of base pay for continuing to work a 56 hour workweek. All current scheduling practices would remain in place.

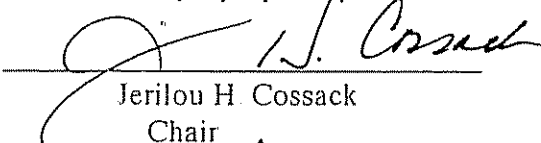


Discussion

This proposal by the Union is a unique and creative way in which to view the world in order to support a wage increase.² The collective bargaining process itself offers multiple opportunities to explore different approaches and methods. However, as Arbitrator Brand aptly observed in his 1991 Opinion, "last offer interest arbitration is not an innovative process." The appropriate place for innovation is through bargaining itself, where the parties are able to explore the ramifications of their actions and measure the risks of a new approach against the anticipated rewards.

² Union witness Randall Hudgins testified that although he knew of no other agency in California with a program like that proposed by the Union, he believed in the early to mid-1990's Oakland firefighters retained the 52-hour rate but agreed, through collective bargaining, to work 8.7 shifts at straight time.

San Jose firefighters work a 56 hour week, as do most firefighters throughout the state. As the Union points out, firefighters in the City and County of San Francisco, however, work a 48 hour week and those in the City of Oakland work a 52 hour week. The result is that San Jose firefighters necessarily earn less than those of Oakland and San Francisco on a per hour basis. That alone cannot justify imposing a system of wage determination on San Jose which so dramatically departs from the norm. The Union's proposal also would compel a defined universe consisting solely of the "Big Bay Four," a universe never agreed to by the City and never considered as the exclusive comparable by any Arbitration Board confronted with the question.

For these reasons the City's proposal prevails

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	Jerilou H. Cossack	Date
	Chair	
<input checked="" type="checkbox"/> Concur		_____
<input type="checkbox"/> Dissent	City Panel Member Nora Frimann	Date
<input type="checkbox"/> Concur		_____
<input checked="" type="checkbox"/> Dissent	Union Panel Member Randy Sekany	Date

ISSUE 3: TERRORISM/ANTITERRORISM PAY (Article 5.1.1).

City Proposal:

Status quo

Union Proposal:

Effective July 1, 2006, all persons represented by the IAFF shall receive a wage increase of 2.0% for antiterrorism training. This shall be pensionable.

Positions of the Parties

The City. San Jose firefighters are not involved in anti-terrorism activities and do not receive any anti-terrorism training. The Union's proposal is retroactive to July 1, 2006, despite

the fact the San Jose firefighters do not currently receive any anti-terrorism training. None of the documents introduced by the Union create new duties or responsibilities for San Jose firefighters and none create any kind of anti-terrorism training referenced in the proposal.

The anti-terrorism training pay received by San Jose Police has specific procedures and mandatory annual training. It was in response to higher than anticipated wage increases granted to the firefighters after the POA had settled its contract.

Given that the City's wage proposal already exceeds CPI in the last two years of the agreement, the Union's proposal would simply push wage increases that much further above CPI. The proposal would push the wage increase of firefighters to a compound 7.8% increase in 2006.

Of the 16 agencies surveyed by the parties, only San Francisco receives terrorism training pay, which is for terrorism response and not for anti-terrorism training. San Francisco has long agreed to "parity" between its police officers and firefighters. San Francisco firefighters have this benefit only because San Jose police officers received it several years ago.

There is no justification for a 2% increase retroactive to July 1, 2006 for anti-terrorism training. San Jose firefighters have not had and will not take. The proposal has an ongoing cost of approximately \$2.2 million and is the equivalent of 14 bargaining unit positions. It is simply not justified.

The Union. The 2.0% anti-terrorism pay proposal is less costly than a 2.0% base wage increase because it does not drive roll-up pay enhancements like overtime. It provides additional pensionable compensation without increasing the overtime rate. It is not added to the base wage.

The proposal is justified because an additional 2.0% of compensation must be granted in order for San Jose firefighters to regain their market position vis-à-vis the two comparable universes.

As a "targeted city" San Jose firefighters receive additional training and bear additional work burdens due to identified terrorist security threats. For this increase in anti-terrorism readiness responsibilities, San Francisco firefighters receive an additional 1.0% of base pay. San Jose police officers receive additional anti-terrorism compensation equal to 5.0% of base pay.

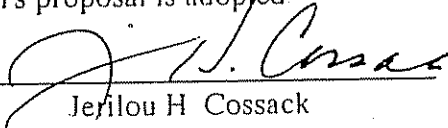
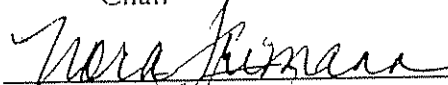
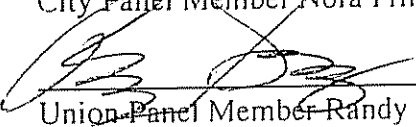
Discussion

The initial references to this proposal entitled it "Terrorism Response Training Pay." (See note on Union Exhibit 5.) The final proposal is entitled "Terrorism/Antiterrorism Pay." The initial title more accurately reflects the documentary evidence introduced in support of it, i.e., Union Exhibits 21, 22, 23, 24 and 25.

Fire Department personnel were mandated to take training in addition to that required of all public employees by the Office of Homeland Security. All Battalion Chiefs and selected Captains were required to take the 27-hour Incident Command ICS-300 and 24-hour ICS-400 classes (Special Bulletin #292, dated June 14, 2006). Both were funded by Homeland Security funds. All personnel were required to complete the National Incident Management System (NIMS) introductory IS-700 training course (Special Bulletin #90, dated October 4, 2005). The course itself was to be completed online in one to one and one-half hours; the test was to be completed in hard copy and mailed to the Training Division. All personnel were required to complete the NIMS ICS-200 training course (Special Bulletin #296, dated June 26, 2006). The course itself was to be completed online in one and one-half to two hours; the test was to be completed in hard copy and mailed to the Training Division. All Battalion Chiefs and above and Senior Dispatchers and above and all those on the Battalion Chief's promotional list were directed to complete NIMS IS-800 course (Special Bulletin #297, dated June 26, 2006). The course itself was to be completed online in two to two and one-half hours; the test was to be

completed in hard copy and mailed to the Training Division. All uniform personnel were required to take three and one-half hours of Seldom Used Skills training (Special Bulletin #45, dated August 25, 2006).

Awarding the Union's proposal would undo the inequity resulting from the adopted City proposal which reduced the 2007 wage increase by the amount of the cost of any increase in Special Operations pay. As previously stated, that reduction is not supported by any internal or external comparison. A premium for acquisition of added skills and training to combat the very real threat of terrorist attack, on the other hand, is supported by internal comparison with the premium paid San Jose police and by external comparison with the premium paid San Francisco firefighters. The Union's proposal is adopted.

		_____
	Jerilou H. Cossack	Date
	Chair	
_____ Concur		_____
<input checked="" type="checkbox"/> Dissent	City Panel Member Nora Frimann	Date
_____ Concur		_____
<input checked="" type="checkbox"/> Dissent	Union Panel Member Randy Sekany	Date

ISSUE 4: EMERGENCY MEDICAL TECHNICIAN (EMT) PAY (Article 5.3)

The parties are in agreement that the status quo should prevail.

	_____	_____
	Jerilou H. Cossack	Date
	Chair	
_____ Concur	_____	_____
_____ Dissent	City Panel Member Nora Frimann	Date
_____ Concur	_____	_____
_____ Dissent	Union Panel Member Randy Sekany	Date

ISSUE 5: LONGEVITY PAY (Article 5.1.2)

City Proposal

Status quo.

Union Proposal

Effective January 1, 2008 all persons with more than twenty (20) years of service shall receive a base pay increase equivalent to five and one-quarter percent (5.25%) of the eligible employee's base rate.

Positions of the Parties

The City. The Union presented no evidence in the arbitration hearings to support its longevity pay proposal. The proposal is unclear, since there is no definition of "years of service," which could refer to years of City service, years of bargaining unit service, or even years of service with a reciprocal agency. There has been no showing of an operational need for longevity pay, which is traditionally used to provide an incentive for employees to work longer. San Jose has no retention problem. The average bargaining unit member retires at age 56 1/2 with more than 29 years of service. Longevity pay was presented as a "placeholder" for the pension issue and is not supported by either party's proposal on pension, since both parties have proposed retirement formulae with 90% maximum benefits. The City's wage proposal already provides wages significantly in excess of any anticipated CPI increases. There is no evidence any comparable agency pays longevity pay. The cost of this proposal is unclear.

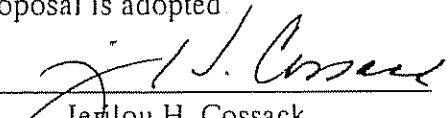
The Union. If the arbitrator is persuaded to award the City's proposal on the "Back 40" retirement proposal, fairness dictates adoption of the Union's proposal for longevity pay for several reasons. First, the "Back 40" formula does not match the relative benefit percentages at equal years of service under the universal market standard offered by CalPERS. This proposal closes the gap in an employee's accrual rate between the "Back 40" proposal and the CalPERS

industry standard. Second, longevity pay will encourage employees to work longer by increasing pay and retirement benefits based on longer years of service. Third, the cost is minimal. City actuary John Bartel declared that implementation of the longevity pay proposal would increase the City's contribution rate by only 1.11 to 1.21%. Awarding the City's "Back 40" benefit formula (costed by Plan actuary Segal at 3.32%) with the Union's longevity pay proposal would generate a pension benefit with accrual rates closer to the market at a combined increase to the City's contribution rate of 4.53%.

Discussion

For many years the parties have adopted a stand alone retirement plan and have decided not to be part of CalPERS. While benefit enhancements have occurred over the years as CalPERS benefits have increased, the San Jose system has never exactly mirrored CalPERS.


As the City points out, longevity pay is traditionally used to provide an incentive for employees to work longer. The evidence establishes San Jose firefighters, on the average, work more than 29 years. The effect of granting the Unions longevity pay proposal would be to increase the retirement payout to close to 95 percent for most everyone. That payout is substantially more than that received under CalPERS or any other jurisdiction and is not justified. The City's proposal is adopted.



Jennlou H. Cossack
Chair

Date


☒ Concur
☐ Dissent



City Panel Member Nora Frimann

Date

☒ Concur
☐ Dissent

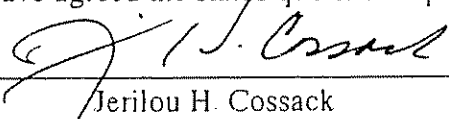

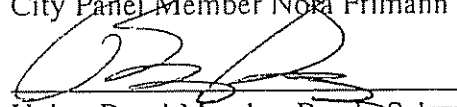


Union Panel Member Randy Sekany

Date

ISSUE 6: HOLIDAY IN LIEU PAY (Article 24.2)

The parties have agreed the status quo should prevail.

		_____
	Jerilou H. Cossack	Date
	Chair	
<input checked="" type="checkbox"/> Concur		_____
<input type="checkbox"/> Dissent	City Panel Member Nora Frimann	Date
<input checked="" type="checkbox"/> Concur		_____
<input type="checkbox"/> Dissent	Union Panel Member Randy Sekany	Date

ISSUE 7: SPECIAL OPERATIONS PAY (Articles 5.2 and 16)

City Proposal

5.2 ~~Special Operations~~ Hazardous Incident Team (HIT)

5.2.1 All employees assigned to the Hazardous Incident Team (HIT) program shall be paid an amount equivalent to a one (1) step increase under the biweekly pay plan, or approximately five percent (5.0) during each biweekly pay period of such assignment.

5.2.1 Relief personnel who are assigned to the HIT Unit during the absence of regularly assigned unit members shall be paid \$15 00 for such assignment during which four (4) or more consecutive hours are worked.

5.2.2 Prior to July 1, 2008, the City will provide Local 230 with the EOPP Section covering the HIT program amended to include the following:

- Skill-based bidding whereby employees with higher levels of skill and/or training applicable to the HIT Program will have priority in bidding into the Program and seniority will be used as a tiebreaker;
- A requirement that any individual assigned to the HIT Program will remain with the HIT Program for a period of three (3) years following the completion of any minimum skill and certification requirements;

- A requirement that all personnel assigned to the HIT Program will maintain and annually demonstrate required skills and complete any mandatory continuing education; and
- A restriction limiting shift trades and relief assignments for personnel assigned to the HIT Unit to other employees assigned to the Program or with qualified relief pool members who had completed the minimum skill and certification requirements.

The Department will adopt the revised EOPP effective July 1, 2008.

5.2.3 Effective the beginning of the first payroll pay period after the final adopted of the revised EOPP covering the HIT Program, qualified relief personnel who are assigned to the HIT Unit during the absence of regularly assigned unit members shall be paid \$25.00 for such assignment during which four (4) or more consecutive hours are worked.

5.2.4 On or about January 1, 2008, the City will provide Local 230 with a draft EOPP describing the USAR program. This draft policy will contain the following:

- Skill-based bidding whereby employees with higher levels of skill and/or training applicable to the USAR Program will have priority in bidding into the Program and seniority will be used as a tiebreaker.
- A requirement that any individual assigned to the USAR Program will remain with that Company for a period of three (3) years following the completion of any minimum skill and certification requirements.
- A requirement that all personnel assigned to the USAR Program will maintain and annually demonstrate required skills and complete any mandatory continuing education; and
- A restriction limiting shift trades and relief assignments for personnel assigned to a USAR Company to other employees assigned to the USAR Program or with qualified relief pool members who have completed the minimum skill and certification requirements.

Local 230 will review and comment on the draft EOPP describing the USAR program and may request bargaining over any matters within the scope of representation (not including items enumerated in this section) on or before March 1, 2008.

5.2.5 Effective the later of July 1, 2008 or the beginning of the first payroll pay period after the parties reach agreement on the EOPP describing the USAR program, all employees assigned to a USAR Company shall be

paid an amount equivalent to a one (1) step increase under the biweekly pay plan, or approximately five percent (5.0%) during each biweekly pay period of such assignment.

5.2.6 Effective the later of July 1, 2008, or the beginning of the first payroll pay period after the parties reach agreement on the EOPP describing the USAR program, qualified relief personnel who are assigned to a USAR Company during the absence of regularly assigned unit members shall be paid \$25.00 for such assignment during which four (4) or more consecutive hours are worked.

5.2.7 Any general wage adjustment effective on or after June 29, 2008 shall be reduced by the cost of any increased premium pay for Special Operations.

5.2.8 Any negotiations over the development of policies pursuant to section 5.2 or any subsection therefore, shall not be subject to arbitration under Charter Section 1111 or the any provision of the MOA.

ARTICLE 16 MANAGEMENT RIGHTS

16.3 The parties agree that OAG Section 240 shall contain the following language:

249 1 Transfers and Assignments

A. Authority

2 *****

Move from 240.1 11. All transfers of personnel within the JFD shall be made on the basis of seniority rights, except transfers made by mutual agreement, bi-lingual positions assignments, assignments to the HIT Unit, assignments to a USAR Company, and transfers for the good of the Department.

Union Proposal

5.2 Special Operations Pay. Compensation for the special operations assignments referenced below shall be calculated from the eligible employee's base rate. In the event that an employee is eligible for more than one such benefit, compensation for each shall be separately calculated from the base rate and shall not be compounded. Compensation for the benefits referenced below shall be pensionable.

~~5.2~~ 5.2.1 Hazardous Incident Team (HIT). Effective July 1, 2007, all employees assigned to the Hazardous Incident Team (HIT) program (i.e., Engine 29, Truck

29 and HIT 29) shall be paid an amount equivalent to a one (1) step increase under the biweekly pay plan, or approximately five percent (5.0%) during each biweekly pay period of such assignment

5.2.1.2 Relief personnel who are assigned to the HIT Unit during the absence of regularly assigned unit members shall be paid \$15.00 for such assignment during which four (4) or more hours are worked. Article 5.2.1.2 shall become inoperable effective July 1, 2007.

5.2.2 Urban Search and Rescue Program Companies (USAR). Effective July 1, 2007 all employees assigned to USAR Program Companies (e.g., engine personnel and USAR personnel) shall be paid an amount equivalent to a one (1) step increase under the biweekly pay plan, or approximately five percent (5.0%) during each biweekly pay period of such assignments.

5.2.3 Airport Rescue Firefighting Program Companies (ARFF). Effective July 1, 2007 all employees assigned to ARFF Program Companies (i.e., Station 20 personnel and Support Engine or Truck Company personnel) shall be paid an amount equivalent to a one (1) step increase under the biweekly pay plan, or approximately five percent (5.0%) during each biweekly pay period of such assignment.

Positions of the Parties

The City. The proposals of both parties expand the City's Special Operations Pay; however, the Union's proposal is excessive. The City's proposal also requires the parties to meet and confer over and develop a policy and procedure covering the USAR companies prior to implementing additional pay for personnel regularly assigned to a USAR company. While the Union's proposal is purely economic, with no thought to the need for policies and procedures to govern assignment, the City's proposal requires the parties to each agree over the policies and procedures as a condition precedent to any increase in pay.

The lack of existing operational procedures for USAR and ARFF evince a need for negotiations over these procedures prior to implementing pay increases. If the Arbitration Board awards an expansion of premium pay to USAR and ARFF companies without any provision,

whatsoever, for the implementation of a policy consistent with the programs' needs, there will be no incentive for the Union to negotiate over the policies necessary to create effective programs.

There is no basis for extending premium pay to support companies. While support company personnel are an important aspect of any special operations company, it would be an extravagance to pay them the same as members of the primary company and would encourage personnel to bid for the support companies, where they could receive the same pay without the same level of training or emergency duties. There is no evidence any other comparable agency pays premium pay for members of support companies.

There is no evidence any ARFF unit in the country receives special operations pay and only one of the 16 jurisdictions surveyed by the parties, Santa Clara County, pays any kind of premium pay for USAR. Santa Clara County's premium is far less generous than that proposed by San Jose. Santa Clara County pays only for members of the "task force," which is trained in and responds to both USAR and HIT scenarios. San Jose already pays a premium for HIT and has proposed premium pay for members assigned to a USAR company.

The Union. In part, the Union's proposal is premised on internal comparison to the "special duties" pay received by San Jose police officers under the POA contract. San Jose police officers receive a one-step pay increase (5%) for specialty assignments for bomb squad, K-9 patrol, motorcycle duty, training officers assignment, MERGE (SWAT) unit, mounted (horse) patrol, and air operations. Arbitrator Brand explained the comparison to specialty pay for San Jose police officers is appropriate even though such pay is not generally accorded firefighters in the external labor market because "there are no effective external comparisons by which to judge [the] proposal."

Firefighters have trained and are trained to provide the specialty operations services in HIT, ARFF and USAR companies. Lack of compensation, at least in the USAR companies, has resulted in a significant vacancy rate approaching 25%. This is disheartening since San Jose is the only department in Santa Clara County with dedicated medium USAR companies.

The cost of the Union proposal is small. The City decides whether to engage in these special operations, and consistent with safe work loads, how many personnel to assign to them.

The Department is not required to have these special operations. However, if it does, firefighters, qua police officers, should be compensated where they have completed the training and bear the responsibility of providing the special operations employed by the Department.

Discussion^{2A}

As a general matter, when employees acquire and use special skills above and beyond those normally required of their position, additional compensation is appropriate. Both parties recognize the legitimacy of the claim for additional pay for additional skills. They diverge on three major points: (1) whether or not support personnel should be compensated for having acquired the additional skills even though they are not the first line of persons called upon to use those skills; (2) whether those persons assigned to Airport duties should receive additional compensation; and (3) whether operation policies and procedures must be in place prior to the receipt of additional compensation.

No other jurisdiction in the state pays firefighters for additional airport responsibilities, although certainly firefighter duties have increased at every airport since September 11. There is no comparable justification for the Union's proposal to provide San Jose firefighters with a 5% premium for their Airport responsibilities. While the Union made the general assertion of

2A

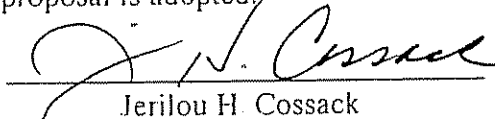
I make no finding on the Panel's power to waive future bargaining over policies and procedures. (JHK) (M) (BKS)

internal comparability with respect to certain San Jose police special assignments, there was no evidence in support of ~~that~~ ^{DOA compensation for program support personnel} assertion introduced into this record.

Certainly those firefighters who provide support back-up in the HIT and USAR teams must devote extra time and effort to maintain their special skills beyond the time and effort they must expend, generally, to maintain their overall skill levels. That time is compensated at their regular rate of pay. When they perform the HIT and USAR duties, the City's proposal provides additional compensation for the performance of those additional responsibilities.

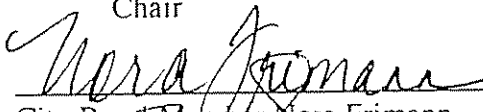
Finally, the operational aspects of the City's proposal are reasonable. Policy and procedure are important aspects of any program.

The City's proposal is adopted.


Jerilou H. Cossack
Chair


Date

☒ Concur
☐ Dissent


City Panel Member Nora Frimann

Date

☐ Concur
☒ Dissent


Union Panel Member Randy Sekany

Date

ISSUE 8: SUPPORT PARAMEDICS (Articles 5.4 and 16)

Prior to completion of the Board's deliberations the parties reached the following agreement on this issue:

Article 5.4 PARAMEDICS

5.4 Paramedics. Each employee licensed by the State of California, accredited by the County of Santa Clara and assigned to front line or support paramedic duty as a paramedic shall be eligible for paramedic premium pay.

5.4.1 Paramedic premium pay for front line paramedics shall be an amount equal to eleven and one-half percent (11.5%) of top step firefighter base

biweekly pay for each pay period in which the employee is entitled to receive a salary. Beginning in pay period 19 of 1996 (August 25, 1996), paramedic premium pay for front line paramedics shall be an amount equal to twelve percent (12%) of top step firefighter base biweekly pay for each pay period in which the employee is entitled to receive a salary.

- 5.4.2 Paramedic premium pay for support paramedics shall be an amount equal to eight percent (8%) of top step firefighter base biweekly pay for each pay period in which the employee is entitled to receive a salary. Effective May 1, 2007, employees who are newly designated as support paramedics shall receive paramedic premium pay in an amount equal to five percent (5%) of top step firefighter base biweekly pay for each pay period in which the employee is entitled to receive a salary. Employees previously designated as support paramedics shall have their paramedic premium pay frozen and "Y-rated" and shall continue to receive that amount as paramedic premium pay until such time as that amount is either less than or equals five percent (5%) of top step firefighter base biweekly pay in which event that support paramedic shall continue thereafter to receive as paramedic premium pay an amount equal to five percent (5%) of top step firefighter base biweekly pay for each pay period in which the employee is entitled to receive a salary.

5.4.2.1 The City may assign up to a maximum of one-hundred forty-seven (14700) support paramedics. If a support paramedic fails to complete the required number of patient contact reports in any given calendar quarter, he or she shall not receive Support Paramedic premium pay until the beginning of the first payroll period after he or she completes at least three (3) patient contact reports in a calendar quarter.

- 5.4.3 Paramedic premium pay shall commence with the first full pay period following meeting all of the requirements in section 5.4 above. However, if all requirements are met on the first Sunday or Monday of a pay period, premium pay will begin in that pay period.
- 5.4.4 Paramedic premium pay shall not be considered "compensation" for the purpose of computing retirement benefits in accordance with the provisions of Section 3.36.020(C) of the City of San Jose Municipal Code. The Union agrees not to propose that paramedic premium pay be included in the definition of "compensation" in the 1996 Police & Fire Retirement Plan negotiations or the 1996 MOA negotiations.
- 5.4.5 If the performance or behavior of a front-line or support paramedic is under investigation by the Fire Department or City Medical Director, the employee shall be removed from paramedic duties during the

investigation, however, paramedic premium pay will not be suspended until the investigation is complete. If the investigation results in findings of misconduct, the employee will be removed from the paramedic program. Paramedic premium pay will immediately cease, and premium pay paid from the date the employee was unassigned from the City's paramedic program will be collected from the employee.

- 5.4.6 The Department reserves the right to assign up to one Support Paramedic position to each Company on each shift. The Support Paramedic position will be reserved for the most senior Support Paramedic that bids on a Company where no support paramedic exists on that Company. This process will normally be completed through attrition. However, the Fire Chief retains the right to reassign for the good of the department.

If no Support Paramedic bids for an open Support Paramedic position, the lease senior relief Support Paramedic will be assigned to that position.

~~After the program is fully implemented in July 1996, the City agrees to fill half of the next twenty-eight (28) front line paramedic vacancies with City of San Jose firefighters if there are interested candidates who are deemed qualified by the Department.~~

- 16.3 The parties agree that OAG Section 240 shall contain the following language:

240.1 Transfers and Assignments

A. Authority

- 1 It is recognized and agreed that the primary obligation of the Department is to provide service of the highest quality to the public. The right to assign personnel is inherent to providing such quality service. Management also recognizes the desire of employees to periodically request changes in work assignments
- 2 Officers may refuse any request for transfer of personnel within their command if in their opinion such transfer would reduce efficiency of the Department. Any such transfer and the reasons therefore shall be set forth in writing by the officer refusing the transfer and sent to the Fire Chief, through channels, with a copy delivered to the member requesting the transfer

If the Chief denies the bid without a recommendation from the Chain of command, the reasons for such denial shall be given in writing to the employee. The employee requesting the transfer which has been refused shall have five (5) days from the receipt of the notice of refusal to file written objections with the Chief

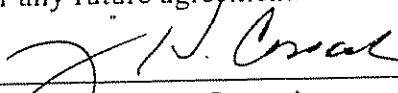


Move from 240.1(C)1. All transfers of personnel within the SJFD shall be made on the basis of seniority rights, except transfer made by mutual agreement, support paramedics, bi-lingual positions assignments and transfers for the good of the Department

If the employee wishes to appeal the Chief's denial, the employee may within ten (10) working days, request a review by the City Manager or designee. Such request shall be in writing, and shall include reasons why the employee is not satisfied with the decision rendered. The City Manager has ten (10) working days in which to notify the employee of the results of such review. The decision of the City Manager or designee shall be final and binding.

The City shall amend the OAG to permit Inspectors in the Fire Prevention Bureau to bid within the Inspector Series by seniority once the position becomes vacant.

The Chief retains the right to deny a bid, change the location of a position, or change an assignment to meet workload demands.

This agreement is considered tentative and shall not be considered final or binding until either: (1) attached and incorporated into a final arbitration award; or (2) a final agreement on all terms has been reached and both ratified by union members and approved by the City Council. This tentative agreement shall not be precedential and shall not bind either party to propose or agree to any specific term for any future agreement.

		_____
	Jerilou H. Cossack	Date
	Chair	
<input checked="" type="checkbox"/> Concur		_____
<input type="checkbox"/> Dissent	City Panel Member Nora Frimann	Date
<input checked="" type="checkbox"/> Concur		_____
<input type="checkbox"/> Dissent	Union Panel Member Randy Sekany	Date

ISSUE 9: OVERTIME EXEMPTION (Articles 5, 10, 11, and 14)

City Proposal

ARTICLE 5 WAGES AND SPECIAL PAY

- 5 6 Administrative Assignment Incentive Pay The City and Union acknowledge that certain employees in non-exempt positions as provided under the Fair Labor Standards Act and represented by the Union are needed to staff forty (40) hour per week assignments and that, while assigned to such duties, these non-exempt employees are limited in their ability to work Minimum Staffing, are not eligible for FLSA overtime based on their regular work schedule and do not receive the work schedule advantages afforded to those non-exempt employees on twenty four (24) hour shift assignments. Therefore, the City agrees to provide Administrative Assignment Incentive Pay in the amount of \$36 per pay period to those non-exempt employees assigned to forty (40) hour per week positions.

ARTICLE 10 CALL BACK PAY AND STANDBY PAY

- 10.1 Any employee in a non-exempt position as provided under the Fair Labor Standards Act who is called back to work after the employee has worked their scheduled shift and has departed from their place of employment shall be credited with overtime for the time worked, or for three (3) hours at the appropriate rate of compensation, whichever is greater. Such non-exempt ~~An~~ employee called back to duty shall be entitled to the three (3) hour minimum call back compensation only once per workday; for subsequent call backs during the same day, the non-exempt employee shall be credited with the time worked or for one-half (1/2) hours at the appropriate rate, whichever is greater

Time worked for minimum staffing and call back purposes shall begin when ~~an~~ a non-exempt employee arrives at the work site. Non-exempt employees shall be allowed one and one half (1 1/2) hours to arrive at the work site after receiving the call to report to duty.

- 10.2 Employees in non-exempt positions as provided under the Fair Labor Standards Act who are required to perform standby duty shall be credited with two (2) hours compensation at the appropriate rate for such standby duty performed on a regularly assigned work day and three (3) hours compensation at the appropriate rate for such standby duty assigned on regularly scheduled days off. When such non-exempt ~~an~~ employee assigned such standby duty is called back, the non-exempt employee shall be entitled to the compensation provided by Section 10.1 only, and to no compensation pursuant to this Section 10.2.

Employees in exempt positions as provided under the Fair Labor Standards Act are not entitled to call back pay under Section 10.1 or standby pay under Section 10.2.

ARTICLE 11 WITNESS LEAVE

- 11.2 Each employee of the City in a non-exempt position as provided under the Fair Labor Standards Act who is called from off-duty status to testify in an arbitration, administrative hearing or in court, under subpoena sought by the City or other

directive of the City on any subject connected with their employment, shall be credited with overtime for the time spent by the non-exempt employee in such arbitration, administrative hearing or court, or for three (3) hours, whichever is greater, less any and all witness fees which the non-exempt employee may receive thereafter.

ARTICLE 14 HOURS OF WORK AND OVERTIME

14.1 The work week shall be seven (7) days commencing at 12:01 a.m. Sunday and ending at 12:00 Midnight the following Saturday, unless an employee is assigned to a different FLSA workweek.

14.5 An employee in a non-exempt position as provided under the Fair Labor Standards Act who is authorized or required to work overtime who works in excess of eight (8) or nine (9) hours per day, or twenty four (24) hours per day is assigned to a work schedule of fifty six (56) hours per week, shall be compensated at the rate of one and one-half (1.5) the non-exempt employee's hourly rate, except when such excess hours result from a change in such employee's work week or shift or from the requirement that such employee fulfill their work week requirement. No overtime compensation shall be paid for overtime worked which does not exceed thirty (30) minutes per day. Overtime worked which exceeds thirty (30) minutes in any work day shall be computed to the nearest one-half (1/2) hour.

14.5.1 A non-exempt employee assigned to a fifty-six (56) hour work week required to work overtime for work regularly assigned to forty (40) hour work week non-exempt employees, or for the purpose of back filling an absence created by a non-exempt employee assigned to a forty (40) hour work week shall be compensated at the overtime rate of one and one-half (1.5) times the employee's 1.4 rate for each overtime hour worked in the forty (40) hour position. In all other instances an employee assigned to a fifty-six (56) hour work week shall not be eligible for overtime at the 1.4 rate. An employee assigned to a fifty-six (56) hour work week shall not be eligible for overtime pay based on conversion to the forty (40) hour work week pay rate when assigned work which is part of the suppression line job function for their rank e.g., QAB's promotional interview boards, suppression line training, EMT proctoring, and special projects or committees.

An employee who is regularly assigned to a non-exempt position and is assigned to work in an exempt position as provided under the Fair Labor Standards Act will not be entitled to any overtime for work performed in excess of the exempt position's regularly scheduled work day or work week.

- 14.6 Overtime worked shall be compensated, at the one and one-half (1 1/2) rate, by compensatory time. However, the Department Head may authorize payment in lieu of compensatory time where providing such compensatory time would impair departmental operations or efficiency. Except in extenuating circumstances, once the non-exempt employee has received approval from the appropriate authority to take compensatory time off, payment for such approved time off shall not be authorized. A non-exempt employee who transfers from working a forty (40) hour per week assignment to working twenty-four (24) hour shifts, or vice versa, shall have the employee's unused compensatory time balance converted accordingly by a factor of 1.4.
- 14.7 Compensatory time credited to ~~an~~ a non-exempt employee, and which is not taken within twenty-six (26) pay periods following the pay period in which the overtime is worked, shall be paid to the non-exempt employee at the appropriate rate.
- 14.7.1 Compensatory time earned while on a forty (40) hour week assignment shall be converted to reflect a fifty-six (56) hour work schedule whenever the non-exempt employee is transferred to a fifty-six (56) hour work schedule. Compensatory time earned while on a fifty-six hour week assignment shall be converted to reflect a forty (40) hour work schedule whenever ~~an~~ a non-exempt employee is transferred to a forty (40) hour work schedule.
- 14.13 All employees assigned to fire line suppression duties shall receive ninety (90) minutes per shift for exercise or work-out needs in accordance with applicable Department policies, provided, however, that this provision shall not entitle any employee to overtime pay ~~work~~ for the purposes of exercising.

Union Proposal

Status quo

Positions of the Parties

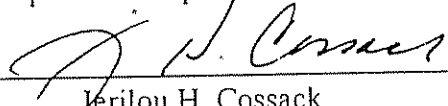
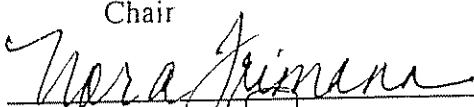
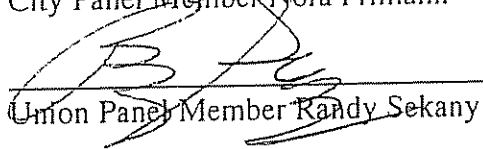
The City. The City's proposal is to clarify the MOA so that all references to overtime, administrative assignment incentive pay, call back and standby pay, and witness leave pay apply only to employees who are not exempt from FLSA. The City has not yet made a determination that any bargaining unit classification is exempt from FLSA. However, the City does not wish to pay exempt employees overtime. Since this is more of a clarification than a change in the status quo, the Charter factors do not have substantial impact on the proposal.

The Union. In 1991 the City proposed to remove battalion chiefs from the bargaining unit. Arbitrator Brand denied the City's demand, finding that among the four large fire departments in Northern California, three (including San Jose) had battalion chiefs in the unit and one (Contra Costa County) did not. Arbitrator Brand noted that removing battalion chiefs from the unit would be a significant change, since they had been in the unit since the beginning of collective bargaining. In the present arbitration, the City is proposing to leave the battalion chiefs in the bargaining unit but deny them significant contractual benefits. The City's own Fire Department operational expert, Scott Kenley, stated unequivocally that in his experience and to his knowledge battalion chiefs are paid FLSA overtime. The City's proposal must be denied.

Discussion

Battalion Chiefs have been in the bargaining unit, and receiving the wages and benefits bargaining for the entire bargaining unit, since the inception of bargaining between the parties. As the Union points out, in 1991 Arbitrator Brand rejected the City's attempt to remove them from the bargaining unit. The City's proposal in these proceedings would deny Battalion Chiefs the benefit of past bargains struck between the parties. The City has not met its burden of proof to establish why such a radical departure from historical norm should be awarded.

The Union's proposal is adopted.

		_____
	Jerilou H. Cossack	Date
	Chair	
<input type="checkbox"/> Concur		_____
<input checked="" type="checkbox"/> Dissent	City Panel Member Nora Frimann	Date
<input checked="" type="checkbox"/> Concur		_____
<input type="checkbox"/> Dissent	Union Panel Member Randy Sekany	Date

Category 2: Health Insurance

ISSUE 10: INSURANCE BENEFITS (Article 6)

City Proposal

ARTICLE 6 INSURANCE BENEFITS

6.1 Health Insurance Coverage

6.1.1 Eligible employees may elect health insurance coverage under one (1) of the ~~three (3)~~ plans for employee only or for employee and dependents. ~~As of the effective date of this Agreement, the plans include: Blue Shield, Kaiser, and Lifeguard.~~

6.1.2 The City will pay ninety percent (90%) of the full premium cost of the lowest cost plan for employee or for employee and dependent coverage, and the employee will pay ten percent (10%) of the premium of the lowest cost plan up to the maximum of \$25.00 per month. Any additional amount above the cost of the lowest priced plan, less \$25.00 per month, required for the premium of any plan other than the lowest priced plan shall be paid by the employee.

6.1.3 Effective the first pay period of payroll calendar year 2006, the City will pay ninety (90%) percent of the full premium cost of the lowest cost plan for employee or for employee and dependent coverage, and the employee will pay ten (10%) of the premium of the lowest cost plan up to a maximum of \$50.00 month. Any additional amount above the cost of the lowest priced plan, less \$50.00per month, required for the premium of any plan other than the lowest priced plan shall be paid by the employee.

6.1.4 Effective the first pay period of payroll calendar year 2007, the City will pay ninety (90%) percent of the full premium cost of the lowest cost plan for employee or for employee and dependent coverage, and the employee will pay ten (10%) of the premium of the lowest cost plan up to a maximum of \$100.00 per month. Any additional amount above the cost of the lowest priced plan, less \$100.00per month, required for the premium of any plan other than the lowest priced plan shall be paid by the employee.

6.1.5 Effective the first pay period of payroll calendar year 2008, the City will pay ninety (90%) percent of the full premium cost of the lowest cost plan for employee or for employee and dependent coverage, and the employee will pay ten (10%) of the premium of the lowest cost plan up to a maximum of \$150.00 per month. Any additional amount above the cost of

the lowest priced plan, less \$150.00 per month, required for the premium of any plan other than the lowest priced plan shall be paid by the employee.

6.1.6 Effective the first pay period of payroll calendar year 2009, the City will pay ninety (90%) percent of the full premium cost of the lowest cost plan for employee or for employee and dependent coverage, and the employee will pay ten (10%) of the premium of the lowest cost plan. Any additional amount above 90% of the cost of the lowest priced plan required for the premium of any plan other than the lowest priced plan shall be paid by the employee.

Union Proposal

ARTICLE 6 INSURANCE BENEFITS

6.1 Health Insurance Coverage

6.1.1 Eligible employees may elect health insurance coverage under one (1) of the three (3) plans for employee only or for employee and dependents. As of the effective date of this Agreement, the plans include: Blue Shield, Kaiser, and Lifeguard.

6.1.2 The City will pay ninety percent (90%) of the full premium cost of the lowest cost plan for employee or for employee and dependent coverage, and the employee will pay ten percent (10%) of the premium of the lowest cost plan up to the maximum of \$25.00 per month. Any additional amount above the cost of the lowest priced plan, less \$25.00 per month, required for the premium of any plan other than the lowest priced plan shall be paid by the employee.

6.1.3 Effective January 1, 2007, the City will pay ninety (90%) percent of the full premium cost of the lowest cost plan for employee or for employee and dependent coverage and the employee will pay ten (10%) percent of the premium of the lowest cost plan up to a maximum of \$100.00 per month. Any additional amount above the cost of the lowest priced plan, less \$100.00 per month, required for the premium of any plan other than the lowest priced plan shall be paid by the employee.

6.1.4 Effective January 1, 2008, the City will pay ninety (90%) percent of the full premium cost of the lowest cost plan for employee or for employee and dependent coverage and the employee will pay ten (10%) percent of the premium of the lowest cost plan up to a maximum of \$150.00 per month. Any additional amount above the cost of the lowest priced plan, less \$150.00 per month, required for the premium of any plan other than the lowest priced plan shall be paid by the employee.

Positions of the Parties

The City. The City splits health insurance premiums with its employees on a 90%/10% basis. The employee contribution has historically been capped at \$25.00. The City has negotiated a phased-in elimination of the cap, with an intent to eliminate it altogether in 2009. Every bargaining unit/employee group except the firefighters has agreed to increases in the cap to \$50.00 in 2006, \$100.00 in 2007, and \$150.00 in 2008. The Union's proposal falls short because it does not include the \$50.00 cap in 2006 agreed to by every other bargaining group and it does not ensure the goal of capping the employees' share at 10% of the cost of the premium. A percentage cap, as opposed to a monetary cap, is critical to ensure an equitable split of the increasingly expensive costs of health insurance. Workers in California pay an average of 12% of single coverage and 25% of family coverage. Moreover, 69% of large employers reported they were "likely to increase the amount employees pay for health insurance in 2007." The City's fiscal condition demands that cost sharing be implemented for firefighters as it has been for every other employee unit.

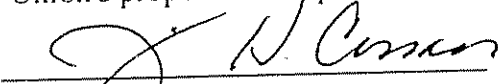
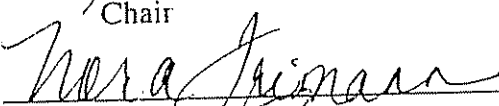

The Union. The Union has accepted the same increases to an employee's cost share for health premiums as those in place during the term of the POA collective bargaining agreement except the Union does not propose to retroactively implement the share split prior to January 1, 2007. The City's proposal to shift onto employees the full cost of 10% of all future health insurance premiums for the lowest priced health plan option beginning in 2009 is wholly unjustified by any labor market comparison. The City controls negotiation of plan provisions with health care providers. To shift onto firefighters liability for future unknown health insurance premium increases beginning in 2009 is unacceptable. It does nothing to collectively address the

forces driving health care costs. The City's proposal seeks to impose costs on firefighters not imposed on any other City employee unit

Discussion

The Union's proposal tracks what exists in other bargaining units, none of which has, to date, agreed to accept a straight percentage allotment. As the Union points out, the City controls the negotiation of plan provisions and the Union has no ability to influence those negotiations. Just as it was inappropriate to burden the City with an unknown general wage increase, so it is inappropriate to burden the employees represented by the Union with unknown expenses over which they have no control.

The Union's proposal is adopted.

		_____
	Jeyilou H. Cossack	Date
	Chair	
<input checked="" type="checkbox"/> Concur		_____
<input checked="" type="checkbox"/> Dissent	City Panel Member Nora Frimann	Date
<input checked="" type="checkbox"/> Concur		_____
<input type="checkbox"/> Dissent	Union Panel Member Randy Sekany	Date

ISSUE 11: HEALTH INSURANCE - PLAN DESIGN CO-PAPYS (Article 6.1.7)

City Proposal

6.1.7 Effective January 1, 2008, co-pays for all available HMO plans shall be as follows:

- a. Office Visit Co-pay shall be increased to \$10.
- b. Prescription Co-pay shall be increased to \$5 for generic and \$10 for brand name.
- c. Emergency Room Co-pay shall be increased to \$50.

Union Proposal

Status quo.

Positions of the Parties

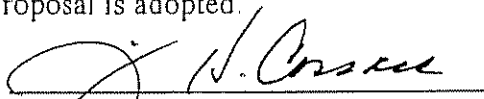
The City. In dealing with the skyrocketing cost of health insurance, employers must look not only at cost sharing but also at plan design. Because of their anticipated impact on employee behavior, plan design changes can reduce premiums while only modestly affecting employee service and choice. Under the City's current Kaiser HMO plan, there is no co-pay for normal office or emergency room visits and no differential between generic and brand name pharmacy prescriptions. The co-pays proposed are reasonable and consistent with the standard established by the vast majority of Bay Area jurisdictions. Of the eleven Bay Area jurisdictions surveyed, more than 90% have a \$10 co-pay for standard office visits, a \$5 co-pay for generic drugs, at least a \$10 co-pay for brand name drugs, and a \$50 co-pay for emergency room visits. The proposal is fiscally responsible and a necessary building block toward a more fiscally-sound approach toward managing health care costs.

The Union. This proposal is a radical change in benefits with cost implications affecting both active and retired firefighters. It will generate huge, undisclosed and unjustified cost savings to the City. The proposal seeks to impose costs on firefighters not imposed on any other City employee unit. It is unjustified.

Discussion

The cost of health care has been burgeoning in recent years. The proposal put forward by the City is not unreasonable. It is consistent with the practice in the vast majority of similar jurisdictions.

The City proposal is adopted.


Jerilou H. Cossack
Chair


Date

☒ Concur
☐ Dissent


City Panel Member Nora Frimann

Date

☐ Concur
☒ Dissent


Union Panel Member Randy Sekany

Date

ISSUE 12: DENTAL INSURANCE - COST SHARING FORMULA (Article 6.2)

City Proposal

6.2 Dental Insurance

6.2.1 The City will provide the dental insurance coverage for eligible full-time employees and their dependents in accordance with one (1) of the ~~two (2)~~ available plans. ~~As of the effective date of this agreement, the plans include an indemnity plan, administered by Delta Dental, and a prepaid plan, insured through Dental Benefit Providers. The dental program provided shall include an option for either prepaid or indemnity coverage. The City shall pay whatever cost increases are incurred during the term of this Agreement for any improvements in dental and orthodontia coverage resulting from these discussions.~~

6.2.1.1 Effective January 1, 2001, each eligible full-time employee and dependents shall receive a lifetime maximum of \$2,000 orthodontia coverage in the Delta Dental Plan.

6.2.1.2 Effective January 1, 2001, each eligible full-time employee and dependents shall receive a lifetime maximum annual dental benefit of \$1,5000 under the Delta Dental Plan.

6.2.2 ~~6.2.2~~ Effective the first pay period of payroll calendar year 2006, the City will provide dental coverage in the lowest priced plan for eligible full time employees and their dependents. If an employee selects a plan other than the lowest priced plan, the City will pay ninety-five (95%) of the full premium cost for the selected dental coverage for eligible full time employees and their dependents and the employee shall pay five percent (5%) of the full premium costs for the selected plan.

6.2.3 Employees who retire will be eligible to continue dental coverage under the terms defined in the San Jose Municipal Code Section 3.36, et seq.

- 6.2.264 If the retiree who has selected the prepaid dental coverage option moves a significant distance away from a designated dental center, that employee may elect to be covered by the other available option(s)

Union Proposal

6.2 Dental Insurance

- 6.2.1 The City will provide the dental insurance coverage for eligible full-time employees and their dependents in accordance with one (1) of the two (2) available plans. As of the effective date of this agreement, the plans include an indemnity plan, administered by Delta Dental, and a prepaid plan, insured through Dental Benefit Providers. The dental program provided shall include an option for either prepaid or indemnity coverage. The City shall pay whatever cost increases are incurred during the term of this Agreement for any improvements in dental and orthodontia coverage resulting from these discussions.

- 6.2.1.1 Effective January 1, 2001, each eligible full-time employee and dependents shall receive a lifetime maximum of \$2,000 orthodontia coverage in the Delta Dental Plan.

- 6.2.1.2 ~~Effective January 1, 2001, each~~ the term of this agreement, all active, eligible full-time employee and their dependents shall receive a lifetime maximum of \$2,000 per eligible full-time employee and their dependents for orthodontic coverage and a maximum for annual dental benefit of \$1,500 per calendar year under the Delta Dental Plan.

- 6.2.1.3 Effective January 1, 2007, the City will provide dental coverage in the lowest priced plan for eligible full time employees and their dependents. If an employee selects a plan other than the lowest priced plan, the City will pay ninety-five (95%) of the full premium cost for the selected dental coverage for eligible fulltime employees and their dependents and the employee shall pay five percent (5%) of the full premium cost for the selected plan.

- 6.2.2 Employees who retire will be eligible to continue dental coverage under the terms defined in the San Jose Municipal Code Section 3.36, et seq.

- 6.2.3 If the retiree who has selected the prepaid dental coverage option moves a significant distance away from a designated dental center, that employee may elect to be covered by the other available option(s).

Positions of the Parties

The City. Dental plan costs have also risen, although not as dramatically as health plan costs. The City has modified its dental benefits with every other employees, adopting a 95%/5% split in premium costs based on the lowest priced plan, effective January 1, 2006. There is no reason the firefighters should be granted a one year reprieve on such an adjustment where every other employee group agreed to a 2006 implementation date. Internal comparability demands that the firefighters accept the modifications to dental insurance agreed to by every other bargaining unit. Steps like this are necessary building blocks toward managing the dramatic increases in health care.

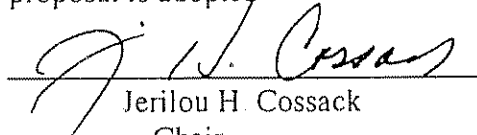
The Union. The parties' counter-proposals on dental insurance are substantively identical. The Union's proposal, however, makes the increase in employee costs effective January 1, 2007, whereas the City's proposal is retroactively effective January 2006. Given the extended period of these proceedings and accompanying litigation, there is no reason why the City's proposal should be adopted. Alternatively, if the justification for adoption of the City's proposal rests upon comparison to the police agreement, then all other City proposals regarding health coverage, plan design, cost sharing, etc. must be rejected for lack of parity with the POA agreement.

Discussion

The question is whether the effective date of the change is retroactive to January 2006 or January 2007. While it may be true that the effective date of the change of all other employee groups was January 2007, the matter is not thereby closed. The City in other areas, such as changes to the retirement benefit formula, does not propose to make its offer retroactive to the

same date as the benefit granted the police. There is no justification for penalizing employees by such a large retroactive increase in their contribution.

The Union proposal is adopted.


Jerilou H. Cossack
Chair

Date

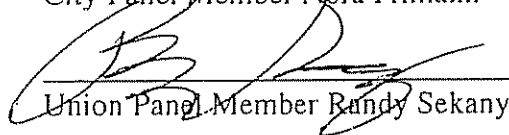
☒ Concur
☒ Dissent


City Panel Member Nora Frimann

Date

☒ Concur

Dissent


Union Panel Member Randy Sekany

Date

ISSUE 13: SICK LEAVE PAYOUT (Article 26.2.5)

City Proposal³

26.2 Sick Lead Payoff

- (c) If such full-time employee, at the time of retirement or death, shall have accumulated and has to their credit at least eight-hundred (800) hours, or one-thousand one-hundred twenty (1,120) hours for any full-time employee who is assigned to twenty-four (24) hour shifts, but less than one-thousand two-hundred one (1,201) hours, or one-thousand six-hundred eight (1,680) for any full-time employee who is assigned to twenty-four (24) hours shifts, of earned unused sick leave, the employee or their estate, shall be paid a sum of money equal to eight percent (80%) of the employee's hourly rate of pay at the time of death, retirement or termination, whichever is earlier, multiplied by the total number of the employee's accumulated and unused hours of sick leave as of the date of death or retirement. This provision shall not apply to any employee who retires more than thirty (30) days after the date the arbitration award become final.

³ The City's original final offer had as the effective dates either June 30, 2007 or July 1, 2007. At the time the offers were prepared it was anticipated the process would have been complete in ample time to allow employees to consider their alternatives and the ramifications prior to being required to make their decisions regarding retirement. However, the process has continued past either party's expectation. In response to the Union's stated concern that bargaining unit members would not have any certainty regarding the sick leave payout prior to retiring, the parties agreed the City would change the effective dates in its proposal to thirty (30) days after the arbitration award becomes final.

(d) If a full-time employee, at the time of service retirement or death, has accumulated and has to their credit at least one-thousand two-hundred one (1,201) hours, or one-thousand six-hundred eight (1,680) hours for any full-time employee who is assigned to twenty-four (24) hour shifts, or greater of earned unused sick leave, the employee or their estate, shall be paid a sum of money equal to one-hundred percent (100%) of the employee's hourly rate of pay at the time of death or service, whichever is earlier, multiplied by the total number of accumulated and unused hours of sick leave as of the date of death or retirement. If after retirement the employee switches from service to disability retirement, the employee shall repay to the City the difference in sick leave payout between service and disability retirement (e.g. one-hundred percent (100%) service, eight percent (80%) disability). This provision shall not apply to any employee who retires more than thirty (30) days after the date the arbitration award becomes final.

(e) Effective thirty (30) days after the date the arbitration award becomes final, if such full-time employee, at the time of retirement or death, shall have accumulated and has to their credit at least eight-hundred (800) hours, or one-thousand one-hundred twenty (1,120) hours for any full-time employee who is assigned to twenty-four (24) hour shifts of earned unused sick leave, the employee or their estate, shall be paid a sum of money equal to seventy-five (75%) of the employee's hourly rate of pay at the time of death, retirement or termination, whichever is earlier, multiplied by the less of (1) the total number of the employee's accumulated and unused hours of sick leave as of the date of death or retirement or (2) twelve hundred (1200) hours for forty-hour employees or one-thousand, six-hundred and eighty (1680) for any full-time employee who is assigned to twenty-four (24) hours shifts.

The following chart summarizes sick leave payoffs effective July 1, 2007:

40 Hour Employee	
No. of Hours	Payout
Less than 400	50%
400-799	60%
800-1200	75% (capped at 1200)

56 Hour Employee	
No. of Hours	Payout
Less than 560	50%
560-1119	60%
1120-1680	75% (capped at 1200)

Union Proposal

Status quo.

Positions of the Parties

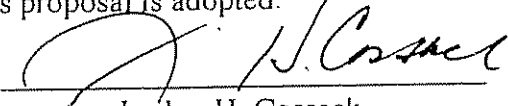
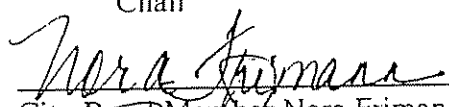

The City. The City permits members of the bargaining unit to cash out up to one-hundred percent of accrued sick leave upon retirement, with no cap. This astoundingly generous benefit has allowed some employees to cash out over \$100,000 in sick leave upon retirement. The City's proposal attempts to place reasonable caps on the percentage of sick leave that can be paid out, as well as the number of sick leave hours that can be accumulated for payout purposes. The City's current sick leave payout is 140% to 257% of the average for other Bay Area jurisdictions. Even the City's proposal is far more generous than what employees in other jurisdictions receive. The existing sick leave payout program is extremely costly, resulting in what amounts to an additional severance package averaging \$20,000 to \$100,000. Given the City's current fiscal situation, there is no basis for continuing to pay this sort of benefit. The purpose of sick leave payout programs is to deter the use of sick leave, which has a cost to the employer. That purpose is a worthwhile one. The City is not trying to eliminate this program or reduce the incentives to save sick leave. The proposal is merely intended to reduce the "top tier" of benefits where sick leave is cashed out for extraordinary sums.

The Union. The City seeks to drastically reduce the cash payment employees will receive upon retirement for service for unused sick leave. Where, as here, there is no assertion of inability to pay, there is no justification whatsoever to reduce compensation or benefits previously attained through collective bargaining. The unused sick leave payout serves as an incentive for employees to work longer and a disincentive for employees to call in sick unless suffering from a bona fide illness or injury. It *lowers* overtime costs because it reduces employee absences. There is no comparable reduction for police officers; the current POA agreement is consistent with the existing benefit of a sick leave payout equal to 100% of unused sick leave.

Discussion

The existing sick leave benefit payout was achieved through the bargaining process. Aside from asserting that it has become too expensive, the City has offered no incentive to support its desire to reduce bargained for compensation. The City has not asserted an inability to pay the benefit. There has been no similar reduction to the benefit in the police contract.

The Union's proposal is adopted.

		_____
	Jenlou H. Cossack	Date
	Chair	
<input checked="" type="checkbox"/> Concur		_____
<input checked="" type="checkbox"/> Dissent	City Panel Member Nora Frimann	Date
<input checked="" type="checkbox"/> Concur		_____
<input type="checkbox"/> Dissent	Union Panel Member Randy Sekany	Date

ISSUE 14: USE OF SICK LEAVE DURING DISABILITY (Article 26.1.5)

City Proposal

26.1.5 Anything in this Article to the contrary notwithstanding, an employee who, pursuant to the provisions of Article 27 of this Agreement, has been receiving temporary disability leave compensation and who has received the maximum allowable amount of such compensation pursuant to Article 27, and who is entitled to Workers' Compensation temporary disability benefits, other than the Workers' Compensation temporary disability benefits provided by Division 1 of the Labor Code of the State of California, and has exhausted all other accrued/available paid leave, shall be ~~permitted~~ required to utilize accrued sick leave subject to the following restrictions: Sick leave shall be utilized in ~~one-half (1/2) hour~~ fifteen (15) minute increments, but in no event shall an employee receive an amount, including any Workers' Compensation temporary disability compensation, in excess of such employee's regular base pay.

Union Proposal

Status quo.

Positions of the Parties

The City. Article 26.1.2 of the collective bargaining agreement allows employees to use sick leave for absences due to non-job related "illness or injury; routine medical or dental appointment; illness in the immediate family as defined herein, or absence of an eligible employee due to illness, injury or disability related to pregnancy or childbirth." Employees may integrate sick leave with their Workers' Compensation temporary disability benefits in a manner sufficient for them to receive up to their regular base salary during their disability period. The proposed changes, which are consistent with every other bargaining unit, memorializes the longstanding practice that City employees cannot integrate sick leave until they have used all other leaves and requiring bargaining unit members to integrate sick leave during their disability once those leave have been exhausted.

Sick leave is intended to prevent a loss of wages in the event of a non-work related disability. An employee who cannot work due to a work-related disability is provided State mandated benefits as well as supplementary pay from the City for a maximum of one year. After the one year period, an employee continues to receive the State mandated benefits but is responsible for both the employee and City costs for all health benefits. In order to continue the City's contributions toward health care, the City requires employees to utilize their available vacation balances. Requiring the use of sick leave during a period of Workers' Compensation Temporary Disability that extends past the one year supplement maintains the employee's active status and normal income through utilization of these available balances.

In addition, this is consistent with the purpose of sick leave as an insurance policy for injuries and not a savings account. Allowing employees to continue to bank their sick leave while on disability increases the overtime burden of the Department because the Department

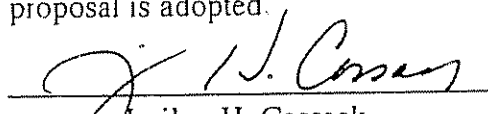
must cover both their absence while on disability and any later absences using sick leave. Likewise, the maintenance of a high sick leave balance, even through an extended absence, may allow an employee to cash out a higher percentage of sick leave upon retirement than they would otherwise be entitled

The Union. Currently, an employee who has exhausted the temporary disability benefits provided by law has the option to use sick leave or long term disability insurance upon exhaustion of the Workers' Compensation benefits. There is no reason to reduce an employee's options. The limitation proposed by the City does not exist in the POA agreement, despite the fact that police officers and firefighters share identical benefits under the state's Workers' Compensation law for temporary disability arising from job incurred injuries and illnesses. Nor has the City provided any evidence for the firefighter labor market demonstrating that any other fire department requires employees to exhaust sick leave following exhaustion of temporary disability benefits under the Labor Code. Firefighters engage in the uniquely dangerous occupation which results in a high rate of injury. There is no evidence of comparability and the City has failed to demonstrate the need for such a radical change in existing benefits.

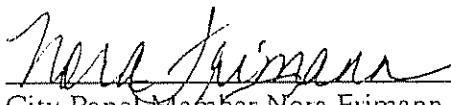

Discussion

As elsewhere discussed, the party proposing to change the status quo bears the burden of proof and persuasion. The City has not met its burden. The asserted fiscal impact is conjecture. The identical benefit which the City seeks to modify here remains in the police contract. The City has not provided any evidence of a similar requirement in other jurisdictions

The Union proposal is adopted.


Jerilou H. Cossack
Chair

Date

<input type="checkbox"/> Concur <input checked="" type="checkbox"/> Dissent	 _____ City Panel Member Nora Frimann	_____ Date
<input checked="" type="checkbox"/> Concur <input type="checkbox"/> Dissent	 _____ Union Panel Member Randy Sekany	_____ Date

Category 3: Retirement

ISSUE 15: RETIREMENT CLEANUP - ELIMINATE TRIPARTITE REFERENCES (Article 28.1)

City Proposal

ARTICLE 28 RETIREMENT

28.1 Benefits of the Police and Fire Retirement Plan System are to be paid in accordance with the provisions of the Plan, ~~and the Memorandum of Agreement on Retirement Between the City and the Union and the San Jose Police Officers' Association.~~

Union Proposal

No Change. Status Quo.

Positions of the Parties

The City. The referenced Memorandum of Agreement on Retirement no longer exists, having expired in June 2004. The current arbitration relates only to the expired MOA between the Union and the City, not the Tripartite Retirement MOU. Judge William Elfving, in Santa Clara County Superior Court case number 1-06-CV-057856, left no doubt that these current proceedings would result in a new bilateral agreement with regard to all issues, including retirement. The former Tripartite Retirement MOU has no relevance and reference to it should rightfully be stricken.

Section 17.1 of the 2000-2003 MOU, a non-disputed provision, states, "any or all prior or existing Memorandum of Understanding, understandings and agreements, whether formal or

informal, are hereby superseded and terminated in their entirety " A reference to the expired Tripartite MOA would run directly counter to Section 17.1

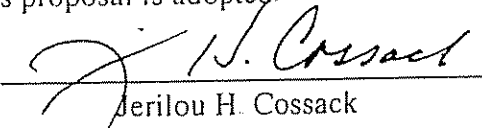
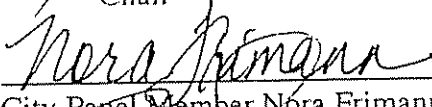
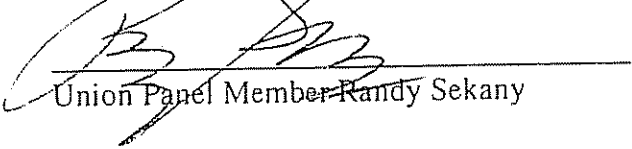
The Union. Although seemingly innocuous on its face, the City's proposal would effectively disconnect the historical collective bargaining relationship between the Union, the POA and the City. The retirement benefit provisions of the recently enacted agreement between the POA and the City do not contain language proposed here by the City to eviscerate and eliminate references to the pre-existing three-party retirement benefits agreement. Article 49 of the 2004-2008 POA Memorandum of Agreement contains multiple references to the Police and Fire Retirement Plan.

The language of the MOA referencing provisions of the three-party contract between the Union, the POA and the City is not outdated and should not be deleted.

Discussion

It may well be true, as the City claims, that reference to the tripartite Memorandum of Agreement has no relevance. However, in view of the fact that the police contract retains the reference which the City seeks to strike, such striking in the fire contract may be premature.

The Union's proposal is adopted.

		_____
	Jerilou H. Cossack	Date
	Chair	
<input checked="" type="checkbox"/> Concur		_____
<input checked="" type="checkbox"/> Dissent	City Panel Member Nora Frimann	Date
<input checked="" type="checkbox"/> Concur		_____
<input checked="" type="checkbox"/> Dissent	Union Panel Member Randy Sekany	Date

ISSUE 16: RETIREMENT SURVIVORSHIP BENEFIT (Article 28)

City Proposal

No Change Status quo

Union Proposal

ARTICLE 28 - RETIREMENT - SPOUSAL SURVIVORSHIP BENEFIT

28.7 Effective July 1, 2008, the spousal survivorship benefit shall be equal to fifty percent (50%) of the member benefit up to a maximum of forty-five percent (45%) of the member's final average salary.

Positions of the Parties

The City. The City currently provides a survivorship benefit equal to 50% of the member benefit up to a maximum of 42.5% of the final average salary. The Union's proposal is a substantial change to survivorship benefits, making them equal to 50% of the member benefit up to a maximum of 45%. This is different than the Union's proposal going into negotiations, which was simply to increase the maximum from 42.5% to 45%. There is no evidence as to what this benefit would cost. Segal Company costed a similar benefit proposal at 0.07%, or approximately \$63,000 per year.

The City's retirement program already has a 3% COLA, which is generally higher than CPI. The increase in survivor benefits is unnecessary in light of that COLA. Internal comparability does not support this change, since the San Jose POA agreed to maintain the existing maximum survivorship benefit at 42.5%. There is no evidence of what other jurisdictions offer in terms of survivorship benefits. Even at 0.07%, this benefit would have a negative impact on the City's budget.

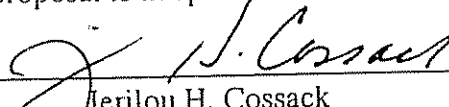
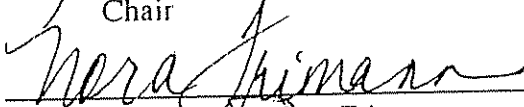
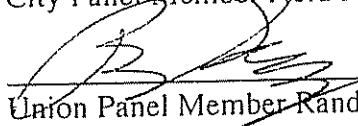
The Union. To provide consistency with the current survivorship maximum benefit formula and fundamental fairness, the Union proposes to increase the maximum spousal

continuance benefit from 42.5% (i.e., 50% of 85%) to 45% (i.e., 50% of 90%). The cost of this increase is miniscule: 07% increase to the City's contribution rate. It should be implemented consistent with an increase in the maximum pension benefit from 85% to 90%.

Discussion

The Union's proposal is consistent with an increase of maximum pension benefits to 90% and retention of the spousal survivorship benefit at the 50% level. Historically, the spousal survivorship benefit has been set at 50% of the retiree's maximum pension benefits. The cost to the City is minimal.

The Union's proposal is adopted.

		_____
	Jerilou H. Cossack	Date
	Chair	
<input type="checkbox"/> Concur		_____
<input checked="" type="checkbox"/> Dissent	City Panel Member Nora Frimann	Date
<input checked="" type="checkbox"/> Concur		_____
<input type="checkbox"/> Dissent	Union Panel Member Randy Sekany	Date

ISSUE 17: RETIREE MEDICAL - PRE-FUNDING CONTRIBUTION (Article 28)

City Proposal

28.7.1 The parties agree that employees represented by IAFF continue to be responsible for one-half of the Actuarial Accrued Liability for retiree medical benefits.

28.7.2 The City may require that employee contributions toward retiree medical benefits be paid into a trust established for that purpose.

28.7.3 The Actuarial Accrued Liability for each party shall be determined from time to time by the Police and Fire Retirement Plan's Retained Actuary. If the City elects to make higher contributions than are required of the employees, those additional contributions will be attributed only to the City's share of the Actuarial Accrued Liability and will not reduce the employees' share of the Actuarial Accrued Liability.

Union Proposal

No change. Status quo.

Positions of the Parties

The City. The City's proposal regarding retiree medical pre-funding contributions reflects what is already required of the parties through the City's Municipal Code, which mandates that the City and employees make equal contributions toward retiree medical benefits. The proposal does three things: (1) it confirms the parties' obligation to share the unfunded actuarial liability; (2) it identifies the possibility of funding the liability for retiree medical benefits in a trust, rather than maintaining the funds either in the retirement plan or the general fund; and (3) it permits the City to accelerate payments for its share of retiree medical liability without affecting the split between employer and employee liability.

While the City's proposal does not represent a change in the way retiree medical benefits are funded, it is important because it recognizes the changing nature of the obligations under GASB statements 43 and 45. Under these new rules, a City must either fund its obligation toward non-pension post-retirement benefits (OPEB) or "book" that liability against the general fund. This decision has a very significant impact on the interest rate that actuaries will assume for the assets used to fund the benefit. Therefore, it is very important for the City to have the option to establish a trust into which these contributions can be made.

The City's proposal would accommodate the City's possible desire to accelerate its share of the retiree medical payment in order to ensure its bond rating under the recent GASB standards. Since the employee portion of the liability is different from the City's share, the City's decision to fund its share of the liability at a higher rate should not affect the employees' share. The proposed language simply makes it clear that should the City decide to make higher

contributions than what would normally be required under the 50/50 split, such contributions would be attributed only to the City's share of the liability would not reduce the employees' share

The Union. This proposal by the City, made without prior bargaining between the parties, seeks to cement language with far-reaching consequences concerning the City's responsibility to report unfunded liabilities under GASB.

The problem with the proposal is simple: currently, the police and fire retirement plans' actuary does not separate liability between police officers and firefighters. There is no agreed upon methodology to be employed by the plans' actuary to separate and attribute assets between firefighters and police officers. In this very arbitration, the City refused to submit to the arbitration panel a different proposal by the Union to agree upon a costing methodology for separating firefighter retirement plan assets from police officer retirement plan assets.

The proposal is an invitation to chaos. The retiree medical benefit was constructed and negotiated by and for the benefit of three parties: the Union, the POA, and the City. If enacted, the City's proposal guarantees future disagreements over the method to be employed by the actuary to separately cost the benefits and value the assets. It does not provide any guidance to the actuary as to what method will be used to determine separate firefighter only actuarial accrued liability.

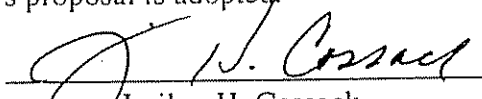
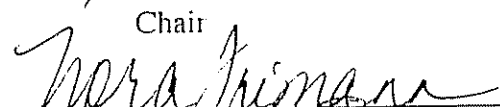

There is no identical or similar language in the City's contract with the POA. If adopted, the language guarantees litigation between the parties, including perhaps the POA, over what actuarial or costing methodology will be employed by the Plan's retained actuary in the event that separate actuarial accrued liability for retiree medical contributions of firefighters and police officers must be identified.

Discussion

The City's proposal is intriguing. The problem with adopting it through these proceedings, rather than through the bargaining process, is that the issues and concerns raised by the Union cannot be discussed and resolved. There have been no discussions between the parties at all on this matter.

This proposal seeks to address real problems faced by the City with respect to its bond ratings and fiscal solvency. The parties themselves should explore it, but awarding it here would be premature.

The Union's proposal is adopted.

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	Jerilou H. Cossack	Date
	Chair	
<input checked="" type="checkbox"/> Concur		_____
<input checked="" type="checkbox"/> Dissent	City Panel Member Nora Frimann	Date
<input checked="" type="checkbox"/> Concur		_____
<input type="checkbox"/> Dissent	Union Panel Member Randy Sekany	Date

ISSUE 18: RETIREE MEDICAL - PREMIUM COST SHARING FORMULA (Article 28)

City Proposal

ARTICLE 28 RETIREMENT

28.9 Employees who retire on or after July 1, 2007, shall pay the same share of medical and dental premiums (at the coverage level to which they are entitled under this MOA) as active employees represented by IAFF.

For example, on July 1, 2007, the Plan will contribute 90% of the retiree medical premium for the lowest priced plan at the appropriate coverage level and the retiree will contribute 10% up to a maximum of \$100. On January 1, 2008, the Plan will contribute 90% of the retiree medical premium for the lowest priced

plan at the appropriate coverage level and the retiree will contribute 10% up to a maximum of \$150.

Union Proposal

No change. Status quo.

Positions of the Parties

The City. Currently, the City pays 100% of the medical premium for its retirees, which is more than it pays for active employees. The City proposes that employees who retire on or after July 1, 2007 pay the same share of medical and dental premiums (at the coverage level to which they are entitled under this MOA) as active employees represented by the Union. Current retirees continue to receive 100% of the single or family premium for the lowest priced plan.

Both the City and Union proposals on retirement formula establish a 90% retirement benefit, retired bargaining unit members will have a significant income with a built-in COLA of 3% per year. Since retiree incomes can be expected to grow in excess of CPI, the modest increase in retiree payments toward medical are entirely appropriate. Under the City's proposal, retiree medical benefits would be more comparable (albeit still much richer than) other surveyed jurisdictions. The City's proposal is a reasonable means to help control rising medical costs. This proposal is a small step toward addressing the significant cost of the generous retiree medical benefit.

The Union. If this proposal is adopted it would generate untold millions of dollars in savings to the City, not one penny of which has been identified or accounted for in the record. It severely reduces current retiree medical benefits for employees who retire on or after July 1, 2007. Current post-retirement medical benefits have been 50% paid for by employee contributions. This proposal breaks faith with current employees.


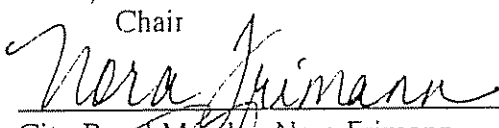
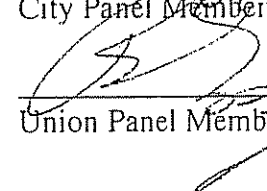
Only about 1.9% of payroll per year need be set aside over the course of the next few years to comfortably meet not only the GASB reporting requirements but also reduce the unfunded liability for police and fire retiree benefits.

No such similar reduction in post-retiree medical benefits exists in the agreement between the City and the POA.

Discussion

The City's proposal would deprive current employees who have already contributed to one-half of the cost of their anticipated post-retirement benefits. To grant the City's proposal would deprive them of the benefit of their contribution. This benefit continues only so long as employees continue their one-half contribution. As will be discussed later, the general area of medical benefits, including those of retirees, is ripe for meaningful discussion between the parties. That discussion has not been held. There has been no similar reduction in police retiree benefits. In addition, current retirees are not employees of the City. It is arguable whether their benefits may be addressed by Charter Section 1111.

The Union's proposal is adopted.

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	Jerilou H. Cossack	Date
	Chair	
<input checked="" type="checkbox"/> Concur		_____
<input checked="" type="checkbox"/> Dissent	City Panel Member Nora Frimann	Date
<input checked="" type="checkbox"/> Concur		_____
<input type="checkbox"/> Dissent	Union Panel Member Randy Sekany	Date

ISSUE 19: RETIREE MEDICAL - BENEFIT CHANGES (Article 28)

City Proposal

28.8.1 Eligible employees hired before July 1, 2007 shall be entitled to a Plan contribution toward the premium for retiree medical insurance tied to the lowest priced plan at either the single or family coverage level.

28.8.2 Eligible employees hired on or after July 1, 2007, shall be entitled to receive a Plan contribution toward the premium for retiree medical insurance tied to the lowest priced plan at the single coverage level.

28.8.3 The actual Plan contribution for either the single or family coverage level shall be 100% of the lowest priced plan unless the contribution is further limited by another provision of the MOA.

Union Proposal

No change. Status quo.

Positions of the Parties

The City. Changes to the retiree medical benefits for future employees are also necessary to control insurance costs. Employees hired after July 1, 2007 will still be entitled to receive 100% of the single plan premium for the lowest priced plan. If they select the family plan, they would have to pay the difference.

Under the City's current system, retirees actually receive better medical benefits than active employees, since they make no contribution for either the single coverage or family coverage plan. This is highly unusual, as almost all other jurisdictions will fund 100% of single coverage, but not family coverage.

Because the City's proposal only applies to retirees hired after July 1, 2007, it will not affect current employees represented by the Union. It is reasonable and serves the dual purpose of fairly dealing with rising health care costs while at the same time bringing its retirement benefits more in line with the market.

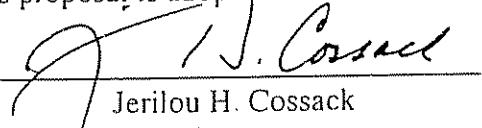
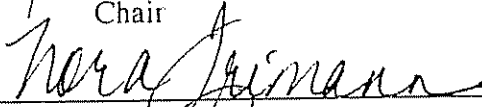
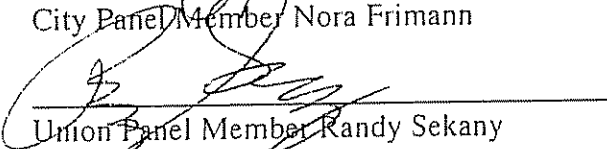
The Union. This proposal would create a second class of retiree medical benefits for employees hired on or after July 1, 2007. On that ground alone, it must be denied.

The proposal would eliminate paid family coverage for retirees. It is an insidious and dramatic reduction in retiree benefits. There is no comparable reduction negotiated between the City and the POA. It promises to save the City tens of millions of dollars, not one penny of which has been identified by the City in support of this proposal.

Discussion

The City's proposal represents a significant reduction in retiree medical benefits. Although two-tier wage and/or benefit systems are not desirable since they generally have a negative impact on employee morale, it may be the only way in which the parties can address the problems posed, to both of them, by escalating medical care costs. It does not appear there have been many, if any, discussions between the parties themselves. No similar reduction exists in the police contract. Under the circumstances, the City cannot prevail.

The Union's proposal is adopted

		_____
	Jerilou H. Cossack	Date
	Chair	
<input checked="" type="checkbox"/> Concur		_____
<input type="checkbox"/> Dissent	City Panel Member Nora Frimann	Date
<input checked="" type="checkbox"/> Concur		_____
<input type="checkbox"/> Dissent	Union Panel Member Randy Sekany	Date

ISSUE 20: RETIREMENT - BENEFIT FORMULA (Article 28)

City Proposal

28.4 The current formula for calculating retirement benefits is two and one half (2 1/2%) percent of final compensation for each year of service with the City up to

twenty (20) years, plus three (3%) percent of final compensation for each year of service with the City between 21 and 25 years, and four (4%) percent from 26-30 years subject to a maximum of eight-five (85%) percent.

The enhanced benefit formula will be changed to two and one half (2 1/2%) percent of final compensation for each year of service with the City up to twenty (20) years, plus four (4%) percent of final compensation for each year of service with the City between 21-30 years subject to a maximum of ninety (90%) percent.

Service from a reciprocal agency may not be combined with the City service in order to earn four (4%) percent per year.

The enhanced benefit formula will be effective for all Fire Department employees who are members of the Police & Fire Department Retirement Plan and who retire on or after July 1, 2007.

In the event that the contribution rates for the enhanced benefit are not adopted by July 1, 2007, affected employees shall contribute to the retirement fund that portion of the contributions for prior service which is attributable to the contributions that would have been made as contributions for current service by members of this plan because of the increased benefits provided had the members made such contributions from July 1, 2007, to the effect date of the contribution rates adjustments. The rate of contribution for such prior service, expressed as a percentage of payroll, shall be the same percentage for all Fire Department members. The prior service costs payable by members of this plan shall be amortized over the same period of time as the city's contributions for prior service costs are amortized.

Union Proposal

ARTICLE 28 RETIREMENT

28.6 The current formula for calculating retirement benefits is 2 1/2% of the final compensation for each year of service with the City up to 20 years, plus 3% of final compensation for each of service with the City between 21 and 25 years, and 4% from 26-30 years subject to a maximum of 85%.

Effective July 1, 2008, the benefit formula will be changed to 3% of final compensation for year of service once an employee completes twenty (20) years of service to a maximum of 90%.

Positions of the Parties

The City. The City's proposal achieves the Union's stated goal of a 90% retirement benefit while avoiding the significant cost and unintended consequences of the Union's proposal.

Over the years, the City and the Union have negotiated a series of changes to their retirement formula, generally driven by changes made by the CalPERS retirement system. However, San Jose has always had a retirement formula which maintained a 2.5% benefit for the first 20 years of service. This formula reduces the "prior service cost" of the benefit, currently paid entirely by the City. It also encourages longevity because employees gain a higher benefit for every year they work at the City, which is a particularly important factor given the age of the City's workforce. The Union's proposal would undo the City's longstanding retirement formula and encourage earlier retirements.

San Jose's 3% COLA is sufficient to maintain pace with inflation even with no formula change. The City also provides a benefit known as the Supplemental Retiree Benefits Reserve (SRBR), which is a reserve fund created by excess earnings in the retirement plan. If the fund earns more than the actuarially-assumed rate, 10 percent of the excess is moved into the SRBR. The funds are then available for distribution to retirees.

The CalPERS retirement benefit is very expensive. The City has never blindly followed the PERS retirement formula. There are many ways to achieve a 90% retirement benefit. The City's proposal achieves this benefit at a lower cost than either the 3% at 50 CalPERS formula or the Union proposal.

The Union has failed to justify the higher cost of its retirement proposal. The City's proposal has a cost of 3.32% of payroll (roughly \$3 million per year), while the Union's proposal has a cost of 5.58% of payroll (more than \$5 million per year). In addition to the higher cost, the Union's proposal would encourage earlier retirements, leading to a "brain drain" and the need for the City to recruit and train more firefighters.

The Union. Every agency in the comparable universe provides firefighters with a pension benefit accruing at the rate of 3% per year of service capped at 90% at 30 years of service, the CalPERS formula. In contrast, under the City's plan, firefighters must have 25 years of service to retire at age 50 and accrue only 2.5% of FAS credit for each year of the first 20 years of service. In addition, San Jose firefighters have a maximum pension benefit of 85% of final average salary.

City actuary John Bartel opined that the City's contribution rate would increase by 11% to provide San Jose firefighters with a pension benefit formula and age/service retirement eligibility matching that of CalPERS. The Union's proposal adopts the 3% accrual/90% maximum benefit for employees with 20 plus years of service without changing the current vesting and age/service retirement eligibility rules. This compromise approach provides market equity on this core issue and would increase the City's contribution rate by 5.58%, or half the cost to the City of matching the CalPERS model in all specifics.

The Union proposal also provides for a dramatically delayed implementation until July 1, 2008, two full years after the City and POA negotiated implementation of the City's backloaded 90% benefit enhancement. This delay saves millions of dollars during the contract term.

No external firefighter comparable jurisdiction supports imposition of the City's pension benefit formula proposal. It is found only in the recently negotiated contract with the POA. Even here, however, the City's final proposal inexplicably delays implementation of the benefit for firefighters by one year until July 2007. The police received the proffered benefit enhancement effective July 1, 2006.

If the arbitrator is persuaded to award the City's proposal, fairness dictates adoption of the Union's proposal on issue number 5 for longevity pay. See Union position under issue 5. Relative

market equity for San Jose firefighters will be achieved only if the Union's longevity pay proposal is also granted. Together, the City's proposal and the Union's longevity proposal would increase the City's contribution rate to 4.53% - less than half the cost to match the CalPERS standard.

Discussion

Applying the Charter criteria to this issue, the Union correctly observes that no other firefighters in the state operate under a retirement plan like that of San Jose. Both parties agree the industry standard is CalPERS. The parties have never embraced the CalPERS model. It has driven modifications in their own plan, to be sure, but they have never adopted it. It is a much more expensive model.

That leaves a comparison to be made between the internally comparable group of police. For some inexplicable reason, the City chose in this instance to not make its proposal comparable to that of the police. Instead of making the benefit enhancement retroactive to 2006, which was the date it was achieved by the police, the City made its proposal effective in 2007. In effect, then, the City's proposal is not internally comparable to the benefit accorded the police.

Both the City proposal and the Union proposal would achieve the goal of raising the retirement benefit payout to 90%. The Union's proposal, however, would make the retirement benefit more nearly resemble that enjoyed by firefighters covered by CalPERS. The City's proposal leaves the firefighters behind both those covered by CalPERS and the police.

It is pure conjecture on the City's part to assert adoption of the Union's proposal would have the unintended consequence of encouraging firefighters to retire earlier. There is no evidence any employee would prefer a retirement benefit of less than 90% and elect to retire before that level was achieved.

Under the Union's proposal, the retirement benefit formula would not change until July 1, 2008, one year past the effective date of the City's proposal and two years past the enhancement date of the police. The Union's proposal would generate a savings for two years beyond what the City has been paying for the police retirement benefit enhancement.

The Union's proposal is adopted.

☐ Concur
☒ Dissent

J. H. Cossack
Jerilou H. Cossack
Chair

Nora Frimann
City Panel Member Nora Frimann

Randy Sekany
Union Panel Member Randy Sekany

_____ Date
_____ Date
_____ Date

ISSUE 21: RETIREMENT - ESTABLISH LABOR MANAGEMENT COMMITTEE ON DROP (Article 37).

Subsequent to the submission of their briefs, the parties agreed to the following:

ARTICLE 37 LABOR MANAGEMENT COMMITTEE

37.3 Labor Management Committee on Deferred Retirement Plan ("DROP"). During the terms of this contract the City and the Union will, not later than 1/31/2008, convene a labor management committee to explore available options and implications of adopting a Deferred Retirement Option Plan (DROP). The Labor Management Committee shall be comprised of a maximum of three (3) members of City Administration and a maximum of three (3) designated Union representatives.

☒ Concur
☐ Dissent

J. H. Cossack
Jerilou H. Cossack
Chair

Nora Frimann
City Panel Member Nora Frimann

Randy Sekany
Union Panel Member Randy Sekany

_____ Date
_____ Date
_____ Date

ISSUE 22: RETIREMENT - PRIOR SERVICE COSTS (Article 28).

City Proposal

28.5 Changes in Unfunded Accrued Actuarial Liability (UAAL) attributable to the prior service costs for retirement benefit changes effective on or after the effective date of this agreement shall be shared equally between the City and employees represented by IAFF.

Union Proposal

No change. Status quo.

Positions of the Parties

The City. Both the City's proposal and the Union's proposal on Issue 20, Retirement Formula, will lead to an increase in prior service costs. The cost of a retirement benefit has two components: normal cost and the increase unfunded accrued actuarial liability (UAAL). Normal cost is the cost attributable to the coming year of service of the cost of the benefit on a going-forward basis. UAAL is the cost of the benefit for years which have already been worked but where the cost of the benefit was not paid. It is often referred to as the "prior service cost."

The City and employee share the normal cost of the retirement benefit on a 3/11 - 8/11 basis. The City is currently responsible for 100% of the increase in UAAL. There is no justification for requiring the City to pay the full cost of the benefit applicable to service rendered prior to the implementation date while the individual employees receive the retroactive benefit with no contribution toward that benefit.

UAAL is a significant portion of the cost created by the shift from an 85% retirement formula to a 90% retirement formula. More than two thirds of the cost of the City's retirement formula proposal (2.29%) is due to changes in UAAL.

Sharing of prior service costs occurs in agencies under the PERS system. This proposal will help offset the significant impact of the retirement formula change. The City's financial condition is tenuous. While the changing economic has prompted improved fiscal signs, the impact of an improved pension formula will be significant.

Maintaining the status quo would unfairly place the entire burden of the UAAL on the City with no justification. The City's proposal is more equitable.

The Union. Under the San Jose City Charter, the cost of retirement benefits is actuarially determined by two parts: normal cost and prior service or unfunded accrued actuarial liability (UAAL). Under the Charter, normal costs of a benefit are divided through a formula of 8/11 to the City and 3/11 to the employee. This proposal violates the City Charter by requiring the firefighters to "equally share" the cost of the UAAL for any benefit changes.

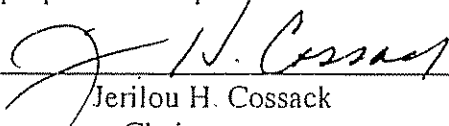
If the Panel awards the City's retirement formula proposal, this proposal would see their contribution rate increase by one-half of the increase in the City UAAL rate of 2.29%, or 1.145%. This is grossly inequitable since it violates the requirement of the City Charter that 100% of prior service cost be paid by the City. Further, the POA and the City did not negotiate such an enormous change in cost sharing when implementing the retirement benefit enhancement for police officers. Adoption of this proposal would expose firefighters to the potential of unlimited increases in contributions for a pension benefit otherwise inferior to the labor market standard and otherwise not required in the agreement providing the identical benefit, albeit at an earlier period of time, between the POA and the City.

This proposal, if adopted, would provide a windfall to the City in unknown millions of dollars since prior service cost fluctuates with investment performance. It is a shift in cost that is unprincipled under a defined benefit plan, which by design reduces risk to the employee.

Discussion

The City asserts sharing of prior service costs occurs in agencies under the PERS system but has provided no evidence in support of the claim. There is no sharing of prior service costs under the City's agreement with the police. This is yet another area in which there seems to have been virtually no dialogue between the parties prior to submission of this matter to arbitration. The sharing of the normal cost between the City and its employees is set forth in the Charter. The Union asserts, without contradiction, that the Charter requires the City to pay 100% of prior service cost.

The Union's proposal is adopted.


Jerilou H. Cossack
Chair

Date

Concur
✓ Dissent


City Panel Member Nora Frimann

Date

Concur

Dissent


Union Panel Member Randy Sekany

Date

ISSUE 23: RETIREMENT - WORKERS' COMPENSATION OFFSET (Article 28).

City Proposal

28.4 In the event a member is retired for a service-connected disability and receives both a service-connected disability retirement allowance and a workers' compensation benefit for temporary disability, permanent disability or vocation rehabilitation temporary disability, then the service-connected disability retirement allowance shall be offset by the sum of all workers' compensation benefits as follows:

1. The offset shall apply only to the following persons:

- a) Those persons whose application for a service-connected disability retirement was filed, by any person authorized to file such application, on or after July 1, 2007; and

- b) Those persons retired on the retirement board's own motion, on or after July 1, 2007.
2. The applicable amount of the workers' compensation benefits shall be converted to a monthly equivalent. The monthly service-connected disability retirement allowance shall be reduced by the workers' compensation benefit monthly equivalent.
 3. The offset shall be in effect only during such time as concurrent retirement allowances and workers' compensation benefits are paid. In the case of the payment of a lump sum workers' compensation benefit (excluding payments for medical treatment), the offset shall apply only for such period of time as concurrent payments would have been made had the workers' compensation benefit been paid in installments.
 4. In no case shall the offset reduce the service-connected disability retirement allowance to an amount less than the sum of the maximum retired member contributions for medical, dental, life and accidental death insurance premiums, as determined by the City, plus one dollar. This limitation shall apply regardless of whether the retired member actually contributes toward the payment of such premiums.
 5. The offset shall not apply with respect to workers' compensation benefits paid for any injury or illness which did not cause or contribute to the disability for which the service-connected disability retirement was granted.

Union Proposal

No change. Status quo.

Positions of the Parties

The City. City firefighters who receive service connected disability retirements are also eligible for workers' compensation benefits for the same injury with no reduction. The City's proposal will partially eliminate the duplicate compensation and require that the service connected disability retirement benefits be offset by any Workers' Compensation payments for temporary or permanent disability payments. This will reduce the economic incentive to apply for disability retirement by eliminating the dual payment for a single injury. The proposal is carefully crafted to address only the problem of dual compensation for the same injury.

Labor Code Section 4850 provides for up to one year full salary paid leave of absence for firefighters, and other public safety officers in lieu of the regular state temporary disability benefit. With the exception of a few fire districts, coverage of Section 4850 is limited to those safety officers who are members of PERS or CERLS. Almost all cities and counties are members of PERS. The Section 4850 benefit, full wages, is considered to be tax free as a workers' compensation benefit and is payable for one year unless there is an earlier retirement. However, upon retirement, firefighters covered under Section 4850 and PRS do not receive any further temporary disability benefit.

The City has its own unique retirement system and is self-insured for workers' compensation. It does not participate in PERS. City firefighters receive a similar benefit of disability leave payable at full wages for up to one year. In addition to temporary disability, and retirement payment, San Jose firefighters also receive permanent disability payments.

No comparable agency allows its members to "double dip" and receive both a retirement allowance and a workers' compensation temporary disability payment for the same injury. Internal comparability also supports the City's position. Non-sworn retired San Jose employees have their retirement benefit offset by workers' compensation indemnity payments of temporary disability and permanent disability.

The Union. The City seeks to reduce disability retirement benefits to firefighters injured as a result of their job by integrating or reducing their retirement benefits by any award provided the employee under the workers' compensation system. This is a variant of a proposal made by the City before Arbitrator Brand and denied by him 16 years ago. The Union argued then, and argues now, that because firefighters are engaged in an inherently hazardous occupation whose

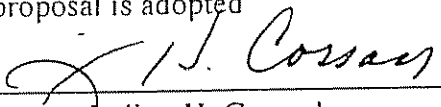


risk cannot be eliminated, public policy has expressed in the workers' compensation laws that they are to be treated differently, when disabled, from other employees

This proposal is an attempt to punish firefighters for the disability benefits negotiated under the Police and Fire Retirement Plan and otherwise provided by state law. No such offset between disability retirement benefits and workers' compensation payments was negotiated between the City and the POA.

Discussion

As Arbitrator Bogue observed, non-safety employees in the City or elsewhere do not perform "similar services" to police and fire. The appropriate comparison rests with San Jose's police, not with the City's non-sworn personnel. This is a benefit of long-standing and the City has not provided any persuasive reason to reduce it. Again, it would appear there was no discussion about this proposal prior to its submission to arbitration.

The Union's proposal is adopted

		_____
	Jerilou H. Cossack	Date
	Chair	
<input checked="" type="checkbox"/> Concur		_____
<input checked="" type="checkbox"/> Dissent	City Panel Member Nora Frimann	Date
<input checked="" type="checkbox"/> Concur		_____
<input type="checkbox"/> Dissent	Union Panel Member Randy Sekany	Date

ISSUE 24: RETIREMENT - STAFF COSTS CHARGED TO RETIREMENT FUND (Article 28).

City Proposal

~~28.2 No staff services from the City Attorney's Office will be charged to the Police and Fire Retirement Fund.~~

Union Proposal

No change. Status quo.

Positions of the Parties

The City. The proposal to eliminate references to staff costs is reasonable. The City Attorney's Office provides assistance and advice to the Police & Fire Department Retirement Plan. However, the MOA currently prohibits this service from being charged to the Plan. This is inconsistent with City practice where the City Attorney's Office costs are often funded by outside funds. As such the City asks that the prohibition of this offset be eliminated to allow proper charges where appropriate.

The Union. This proposal is also a rehash of a proposal considered and rejected by Arbitrator Brand 16 years ago. Since the issuance of the award by Arbitrator Brand, the voters of the State of California have adopted Proposition 162 establishing the absolute independent authority of the trustees to a public employee retirement plan to administer that plan in accordance with basic fiduciary duties. Accordingly, the Plan is no longer required to consider, nor accept, legal services from the City Attorney's Office. The Plan has hired its own independent legal counsel, Russ Richeda from the law firm of Saltzman and Johnson. There is no reason to require plan assets to be used for expenses not related to the fiduciary obligations of the Board of Administration. In fact, there is a legal prohibition against such use.

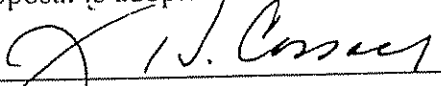
No provision of the POA agreement permits staff services from the City Attorney's Office to be charged to the Plan. The lack of comparability, the prior arbitral history, and the significant change in recognition of fiduciary duties and rights of the Retirement Board of Administration require rejection of this proposal.

Discussion

I am not persuaded that the costs for City Attorney
~~The City has not shown any instances where the services of the City Attorney's Office~~
services should be paid for by the Plan. (jwc) (M) (MCS)
~~were sought by the Plan, or even where they appropriately might have been sought. The Union's~~

arguments are persuasive

The Union proposal is adopted.




Jerilou H. Cossack
Chair
Date _____

☒ Concur
☒ Dissent



City Panel Member Nora Frimann
Date _____

☒ Concur
☐ Dissent



Union Panel Member Randy Sekany
Date _____

ISSUE 25: 48/96 WORK SCHEDULE (Article 14)

City Proposal

No change. Status quo.

Union Proposal

ARTICLE 14 HOURS OF WORK AND OVERTIME

14.11.2 Effective January 1, 2008 or as soon thereafter as practicable, the fifty-six (56) hour shift shall be worked on a 48/96 schedule for a period of one year. At any time during this year, the Union or the Department may elect to revert back to the current schedule from the 48/96 schedule.

Positions of the Parties

The City. Allowing Union members to experiment with a 48/96 work schedule would negatively impact workload, training, and administration. Since the Union membership was split on whether to pursue the 48/96 option, the conversion to that schedule would negatively impact morale for almost as many employees for whom the change would potentially increase morale

There is a significant downside to the 48/96 schedule. It would increase firefighter fatigue, jeopardizing the employee's own safety as well as that of others. The fatigue problem would be especially acute in large departments such as San Jose. Many stations in the City experience a large volume of calls around the clock. Firefighters who need to respond to a late-night call during their first 24 hour shift benefit greatly from a day off to recover.

There are also significant operational problems associated with the 48/96 schedule. It would place a strain on training by limiting the number of days workers are available for that purpose. Managers are more likely to lose contact with those they supervise because workers are away for longer periods of time; special projects take longer.

The temporary nature of the Union's proposal does not make it any more palatable in light of the administrative burdens created by first changing to the new schedule and then changing back.

Finally, no comparable jurisdiction in the entire Bay Area has adopted the 48/96 schedule. Nor have any of the 10 largest California cities.

The Union. Under this proposal, employees would work two consecutive days and then have four days off for a trial period. This proposal would benefit firefighters by reducing their travel time and stress and benefit the environment. It recognizes that housing costs have driven employees farther and farther away from Santa Clara County.

The report prepared by Captain Martin Hoenisch and the Local 230 48/96 Schedule Committee in April 2003, as well as Captain Hoenisch's testimony in these proceedings, summarizes the findings about this schedule which led the Union membership to vote, by a close margin, to press for its adoption by the City. The 48/96 schedule allows employees more opportunity to recover from sleep deprivation and long-term fatigue by: (1) increasing the

number of four day rest periods from 40 to 60 a year; (2) increasing the number of "sleep in days" from nine to 15 per month, or by 60%; (3) reducing the number of days/hours employees spend getting ready for work and commute time by 50%; and (5) provides greater flexibility for employees working overtime or trades. The 48/96 schedule has either a neutral or positive effect on reducing sick leave usage. The report identified the following additional benefits for employees: more time at home with family and friends, 10 additional full weekends off a year, 20 additional "4 days" a year, and increased productivity at home.

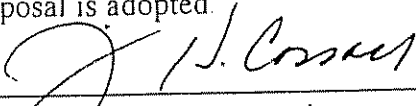
The April 2003 report identified the following benefits which would be achieved by the Department in adopting the 48/96 schedule: improved moral, increased productivity and project follow through on duty, better communication between shifts, less duplication of work, greater employee retention and more qualified applicants.

Discussion

As elsewhere pointed out, the real beauty of collective bargaining is its ability to explore new and different ways of resolving workplace issues. That give-and-take is inherent in the process. Arbitration, on the other hand, is not a good forum for experimentation and innovation.

It may well be that this schedule has all of the promise described in the 2003 report. However, such a radical departure from the existing method of operation should only be undertaken with the full support of both parties and should not be imposed by an outside third party absent compelling reasons to do so. There are no such compelling reasons present here. The City's arguments are persuasive.

The City's proposal is adopted



Jerilou H. Cossack
Chair

Date

☒ Concur
☐ Dissent


City Panel Member Nora Frimann

Date

☐ Concur
☒ Dissent


Union Panel Member Randy Sekany

Date

ISSUE 26: USE OF UNEARNED VACATION & MAXIMUM VACATION ACCRUAL (Article 26).

City Proposal

25.2 Reimbursement for Unearned Vacation Leave. If the employment of any full-time employee should cease, and if they should have taken more vacation leave than they had accrued at the time of termination of their employment, there shall be deducted from their final pay, or the employee shall refund to the City, such pay as the employee shall have received for such unearned and unaccrued vacation leave theretofore taken by the employee. The provisions of this Subsection 25.2 shall not apply to any full-time employee whose employment by the City is terminated by reason of death, or entry into active duty with any of the Armed Forces of the United States that is reasonably likely to exceed one (1) year in duration.

25.8 Carry-over of Vacation Leave. An employee may carry over to the next subsequent cycle of twenty six (26) biweekly pay periods not more than two-hundred (200) hours for employees on a forty (40) hour workweek and two-hundred forty (240) hours for employees on a fifty six (56) hour workweek of unused vacation leave, together with any earned vacation which the employee is prevented from using in the former cycle, during which it is accrued, because of service-connected disability or extended sick leave with or without compensation. This carryover process shall expire at the end of payroll calendar year 2008.

Effective the first payperiod of payroll calendar year 2009, employees shall not be allowed to accrue vacation in excess of two times their annual vacation accrual rate. Once the maximum accumulation has occurred, vacation will cease to accrue until the employee's vacation balance has fallen under their maximum vacation accrual amount.

Effective the first payperiod of payroll calendar year 2009, any employee who is already above two times their annual vacation accrual rate, will cease accruing vacation until they have used enough vacation to bring them below their maximum accrual amount.

25.10 Effective the first payperiod of payroll calendar year 2009, employees will only be allowed to use vacation that has already been accrued.

Union Proposal

25.2 Reimbursement for Unearned Vacation Leave. If the employment of any full-time employee should cease, and if they should have taken more vacation leave than they had accrued at the time of termination of their employment, there shall be deducted from their final pay, or the employee shall refund to the City, such pay as the employee shall have received for such unearned and unaccrued vacation leave theretofore taken by the employee. The provisions of this Subsection 25.2 shall not apply to any full-time employee whose employment by the City is terminated by reason of death, or entry into active duty with any of the Armed Forces of the United States that is reasonably likely to exceed one (1) year in duration. This Section 25.2 shall not be in effect after the first payperiod of payroll calendar year 2009.

25.8 Carry-over of Vacation Leave. An employee may carry over to the next subsequent cycle of twenty six (26) biweekly pay periods not more than two-hundred (200) hours for employees on a forty (40) hour workweek and two-hundred forty (240) hours for employees on a fifty six (56) hour workweek of unused vacation leave, together with any earned vacation which the employee is prevented from using in the former cycle, during which it is accrued, because of service-connected disability or extended sick leave with or without compensation.

Positions of the Parties

The City. The City's proposal addresses two problems. First, the City currently has an unwritten practice of permitting employees to use vacation they have not year earned. This policy raises obvious concerns. This proposal would bring the City's firefighters in line with both internal and external comparables by providing that employees may use only earned vacation time. The change will not be effective until 2009, giving employees over a year to prepare for the change.

Second, the City's firefighters do not have a maximum accrual for vacation. Rather, there is a maximum number of hours that can be carried from one year to the next. Presumably, anyone with accrued vacation over the carryover limit would lose that vacation. However, such a system is unlawful. (Labor Code § 227.3; *Suarez v. Plastic Dress-Up Co.* (1982) 31 Cal 3d 774,

779) The City seeks, instead, to implement an accrual cap for vacation. In almost every case, the proposed accrual cap exceeds the current carryover limits.

The Union's proposal seeks to eliminate the provision that makes explicit the City's right to seek reimbursement from an employee who leaves city services after having taken more vacation leave than had been earned

The Union. The proposal seeks two disparate results: it would prohibit employees from receiving vacation leave pay unless they have the requisite hours already earned; and it cuts off employee accrual of vacation leave "until they have used enough vacation to bring them below their maximum accrual account" of two times their annual vacation accrual rate.

The Union does not object to the City's first goal. However, it strenuously objects to any contract language arbitrarily prohibiting the accrual of vacation leave under any limit. No such limitation is set forth in the POA contract. And the City has failed to provide any comparative data from the firefighter labor market supporting a cap on vacation accrual.

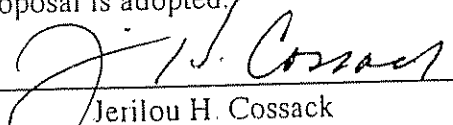
Discussion

The City has provided comparable data for firefighters in Alameda County, Berkeley, Contra Costa County, Daly City, Fremont, Hayward, Oakland, San Francisco, Santa Clara, Santa Clara County, and Sunnyvale. See City Exhibit 28-C at page 19. Of the jurisdictions surveyed, only Daly City and Oakland (sworn) have no maximum. Alameda County, Contra Costa County, Fremont, and Hayward have a maximum of two times the annual accrual. The remaining jurisdictions have maximums of varying lengths.

The Union's proposal would have the effect of forestalling the City from seeking reimbursement from an employee who terminated employment having used more vacation time than that to which s/he is entitled.

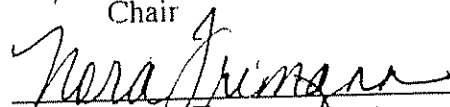
It is true, as the Union argues, the POA contract does not contain the carryover restriction the City proposes here, and it therefore internally not comparable. However, it is externally comparable.

The City's proposal is adopted.


Jerilou H. Cossack
Chair

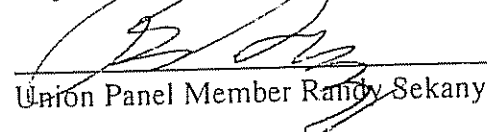
Date

☒ Concur
☐ Dissent


City Panel Member Nora Frimann

Date

☐ Concur
☒ Dissent


Union Panel Member Randy Sekany

Date

ISSUE 27: COMMUNITY RESPONSE READINESS (Article 49)

City Proposal

ARTICLE 49 COMMUNITY RESPONSE READINESS

As a condition of employment, all employees hired after July 1, 2007, shall reside within ninety (90) minutes travel time from the City of San Jose, City Hall, 200 E. Santa Clara Street, San Jose, CA 95113. Travel time shall be determined by the total estimated automobile trip time as calculated by MapQuest™ (<http://www.mapquest.com/>) or other mutually agreed equivalent program. Employees who reside outside of this area on their hire date must change their residence to a location that complies with this section within one-hundred and eighty (180) days of their initial date of hire.

Union Proposal

No change. Status quo.

Positions of the Parties

The City. The City's proposal to require that future hires live within 90 minutes of the City is necessary to ensure long-term disaster response readiness. The City now requires bargaining unit members to be available to return to work within 90 minutes of callback.

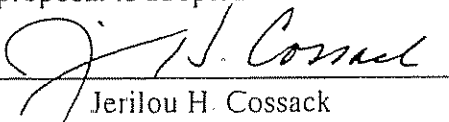
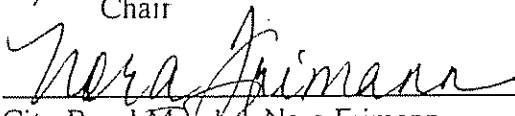
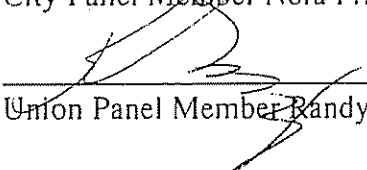
The City's proposal is a rational response to a growing problem. Fewer employees represented by Local 230 reside in Santa Clara County compared to any other City bargaining unit. This places at risk the City's ability to respond quickly to disasters and emergency situations. The proposal would affect no current employees represented by Local 230 and would allow new hires a grace period of six months to change their residency to comply with the new provision.

The Union. There has never been an occasion in the history of San Jose where a catastrophic event has not been responded to because of a failure of individuals to return to the line of duty. The City has provided no evidence to support the need for a restriction on firefighter residences to an area geographically within 90 minutes travel time of downtown City Hall. The City's own evidence suggests the vast bulk of San Jose firefighters already reside more than 90 minutes travel time from City Hall. There is no reason to adopt this proposal.

Discussion

In a perfect world it would be preferable for employees to live in the community they serve. However, the City has not shown that any problem actually exists. Under these circumstances, placing such a restriction on employees is not warranted.

The Union's proposal is adopted.

		_____
	Jerilou H. Cossack	Date
	Chair	
<input checked="" type="checkbox"/>	Concur	
<input checked="" type="checkbox"/>	Dissent	
		_____
	City Panel Member Nora Frimann	Date
<input checked="" type="checkbox"/>	Concur	
<input checked="" type="checkbox"/>	Dissent	
		_____
	Union Panel Member Randy Sekany	Date

ISSUE 28: UNION RELEASE TIME (Articles 49 and 33)

City Proposal

ARTICLE 49 UNION RIGHTS

Release Time

Employees of the San Jose Fire Department are not permitted to attend employee organization/Union meetings during working hours.

Paid Release Time is permitted under the following circumstances:

- Attendance at Meet and Confer sessions between the employee organization/Union and the City. The number of such employees is limited by the provisions of the Employee-Employer Resolution #39637 (City Policy Manual, Section 2.1.1).
- Attendance at scheduled meetings with management, such as scheduled grievance meetings by a designated representative of the employee organization/Union.
- Any other release time must receive prior approval by the Fire Chief and the Office of Employee Relations, via the chain of command of the individual concerned.

[Note: This language replaces the language currently in the ROPPI]

ARTICLE 33 MINIMUM STAFFING

33.2.6 At the discretion of the Fire Chief or designee, and notwithstanding the above provisions, the following vacancies need not be filled:

33.2.6.2 In addition to section 33.2.6.1, a total of three (3) employees, absent for twelve (12) hours or less, who are Executive Board members or designees, for union release time as identified in Article 49. ~~business.~~

Union Proposal

No change Status quo.

Positions of the Parties

The City. The MOA does not currently set forth City policies on release time, resulting in inconsistent application. In fact, some executive board members spend an average of 12 hours per shift on release time

The purpose of paid release time is to allow Union representative a reasonable opportunity to meet with management during normal working hours on a variety of issues, including grievances, negotiations, and other labor management issues. The current practice stems from a variety of sources. Because the policies proposed by the City do not substantially alter the policies set forth from other sources, but rather just consolidate and clarify them, there should be no significant change to what is currently allowed as release time.

Having a clear release time policy would also be consistent with the practice of other comparable jurisdictions. It is typical for labor contracts to contain specific provisions regarding release time, and all large jurisdictions in the Bay Area have terms dedicated to explaining their particular practice.

While the provisions of the proposal contain specific circumstances under which release time will be permitted without prior approval, there is a "catchall" provisions allowing for release time for other purposes without approval by administration. The City recognizes that this provision will be read in accordance with California law to provide release time for purposes such as the investigation of grievances and that release time under the catchall provisions will not be unreasonably denied. Should the Union ever dispute whether the City is acting reasonably, either PERB or an arbitrator will ultimately have authority to determine whether the City's decision was reasonable.

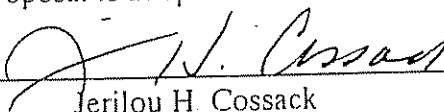
The Union. This, too, was an issued confronted by Arbitrator Brand 16 years ago The City has failed to make any case in support of this proposal on the basis of a specific problem or concern

If the City's proposal is intended to increase accountability, it fails to do that in any meaningful way. As Arbitrator Brand held when faced with virtually the identical demand by the City in 1991: "Rather, [the proposal] represents a fundamental change in the relationship between the Union and the Fire Chief. In effect, it makes the Union a mendicant, dependent upon the Chief for almost any time to properly represent bargaining unit members. Indeed, if the Chief were to deny the time, the Union would not even be guaranteed time to process a grievance about that denial. The proposal represents a fundamental and sweeping change in the relationship between the parties, for which no justification has been provided. Therefore, the City's position must be rejected."

Discussion

As Arbitrator Brand opined, the City's proposal would profoundly alter the relationship between the parties and would deprive the Union of necessary ability to perform functions within its obligations of representation. The City has not shown the hours spent on release time by any Union official were improper.

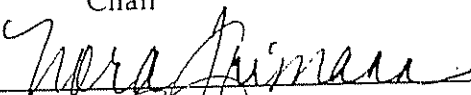
The Union's proposal is adopted.


Jerilou H. Cossack

Chair

Date

Concur
☒ Dissent


City Panel Member Nora Frimann

Date

Concur
☒ Dissent


Union Panel Member Randy Sekany

Date

ISSUE 29: SAFETY OFFICER ASSIGNMENT (Article 19)

City Proposal

19.5 The Chief or designee may designate one or more qualified personnel to act as the Department Safety Officer for purposes of responding to incidents pursuant to the Illness and Injury Prevention Program ("IIPP"). Only the individual assigned to that function at the time of an incident will be required to respond under the IIPP. The to extent that this is inconsistent with any section of IPP or departmental policy, this language shall control.

Union Proposal

No change. Status quo.

Positions of the Parties

The City. Allowing the Chief to appoint more than one Safety Officer would lessen the burden placed on a single individual, who must remain on call 24/7 for two years. It has been the practice to have a Battalion Chief act as the lone Safety Officer. The proposal would expand the Fire Chief's authority to appoint more than one Safety Officer to reduce the workload of any single Safety Officer and to help ensure the availability of Safety Officers for multiple emergencies. It is intended to reduce the Safety Officer workload and to expand training opportunities for other employees to learn the important functions of the Safety Officer.

Most fire departments use a least two Safety Officers, one responsible for the injury and illness prevention plan and the other to oversee safety issues at fire scenes. Although under the City's current practice, the lone Safety Officer has the option to rotate on call duty with another qualified battalion chief, the pool of such employees is limited and it is often difficult. Furthermore, relying on such an informal arrangement can negatively affect accountability and could lead to confusion.

The proposal would lessen the burden placed on a single Safety Officer and would increase the number of Safety Officers who could respond to multiple emergencies at once and it would create better training opportunities for employees

The Union. This proposal is offered simply to reduce the cost to the City of having to pay standby compensation pursuant to Article 10 of the contract to the Battalion Chief assigned responsibilities of the Department Safety Officer. As the record reflects, the City lost a grievance arbitration over this matter and seeks to avoid the impact of that award by permitting the assignment of the Departmental Safety Officer to be shared between unknown individuals without any guarantee these individuals possess the skills and experience to appropriately conduct the critical responsibilities of that position

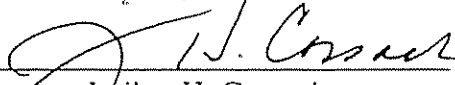
At its core, this proposal elevates dollars over safety. No evidence was provided to show there is an unreasonable burden placed on the 40-hour Battalion Chief historically assigned the duties and responsibilities on a 24/7 basis as the Department Safety Officer. No evidence was presented to show such assignments are not routinely shared among qualified Battalion Chiefs so that adequate time off is afforded the 40-hour Battalion Chief.

The only witness proffered by the City in support of this proposal stated he did not have any information relative to whether the current Safety Officer has been unable to locate someone to work the on-call duty

Discussion

The City has not shown any problem actually exists. There has been no showing there has ever been any issue surrounding accountability or that confusion has ever resulted because of the current system. As with other proposals, it does not appear there was any discussion between the parties about this proposal prior to its submission to arbitration.

The Union's position is adopted


Jerilou H. Cossack
Chair

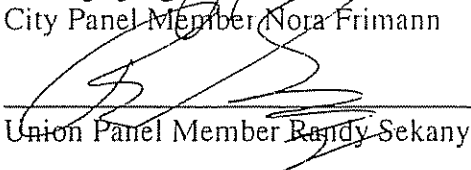
Date

☒ Concur
☒ Dissent


City Panel Member Nora Frimann

Date

☒ Concur
☐ Dissent


Union Panel Member Randy Sekany

Date

ISSUE 30: CIVILIANIZATION OF FUNCTIONS (Article 42)

City Proposal

ARTICLE 42 CIVILIANIZATION OF FUNCTIONS

The City has the discretion to civilianize the positions listed below. Sworn incumbents may be transferred as other positions in the same classification become vacant or the City may delay implementation. If sworn incumbents are to be transferred, they will receive a minimum notice of ninety (90) calendar days. The City will give due consideration to the disabilities of employees occupying such positions and will make a reasonable effort to accommodate such disabilities, including the granting of reemployment rights in different job classifications under existing City programs that provide for maintaining pre-existing salary levels. At the City's sole discretion, civilianized positions may be filled temporarily by sworn personnel without the City waiving its right to civilianize such positions.

~~4.2.1 Fire Prevention - One Battalion Chief~~

4.2.1 Communications - One Battalion Chief

Union Proposal

No change. Status quo.

Positions of the Parties

The City. The City currently has the discretion to civilianize a Battalion Chief in Fire Prevention. The proposal eliminates the discretion of the Fire Chief of civilianize a Fire Prevention Battalion Chief and adds the discretion of the Fire Chief to civilianize the

Communications Battalion Chief. Therefore, there is no additional loss of a bargaining unit position. The proposal will provide the City with a civilian manager for an operation staffed by civilian employees and result in the Department's ability to better serve the public.

Because of the rotation of Battalion Chiefs in and out of the Division, the Department's dispatch operations have suffered from a lack of management experience and consistent management. From 1990 through 2005 there have been 13 different Battalion Chiefs assigned to lead Fire Communications. This rotation does not provide effective management because (1) there is a lengthy learning curve for new managers, (2) sworn personnel lack technical communications expertise, and (3) there is a lack of consistency when interacting with communications personnel from other departments and agencies.

The civilianization of this position would provide stability, allowing a full-time professional with expertise in the technology of computer aided dispatch to run the challenging operations of the Communications division. The Union has presented no evidence to support any phantom safety concerns.

Civilian management of the dispatch function is the standard in comparable communities. As of 2005, Sacramento Regional, San Diego, San Mateo County, Oakland and San Francisco all have civilian communications managers.

The Union. The City advances the notion that the key to running a public safety communications and dispatch system is continuity in management. The City's sole witness on this proposal acknowledged there was nothing in the MOA which would prevent the Chief from assigning a Battalion Chief to Fire Communication as a long-term assignment; such an assignment is within the Chief's discretion.

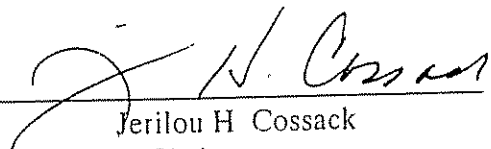
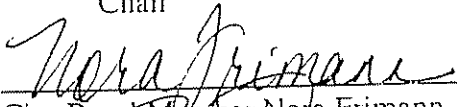
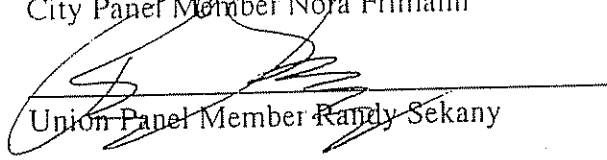
The failure to recognize the need for continuity and exercise managerial discretion to assign to assign a Battalion Chief to that position for a continuous period of time does not translate into a reason requiring the transfer of bargaining unit work.

Replacing a Battalion Chief as the supervisor of the Department of Communications with a lower paid civilian will save the City considerable funds in salary and benefits. However, unlike the positions civilianized in 1991, the job of Fire Communications is inextricably lined with issues of fire ground safety. The need for a Battalion Chief or a line fire officer in communications is paramount when multiple alarm situations are at hand. Unlike a computer or a civilian trained to follow pre-ordained protocols, a Battalion Chief with years of fire ground experience knows with precision which units should be dispatched or "moved-up" for safety reasons in combating fire ground emergencies.

Discussion

The City's rationale for this proposal is one, basically, of continuity. The Union points out that the duration of the assignment of a Battalion Chief to the Communications job is within the discretion of the Chief. The City has provided no explanation as to why management has not exercised the discretion it has to combat the problem identified. And while the City has labeled the Union's safety concerns as a "phantom issue," logic and common sense suggest that there should be someone at the Communications control who understands the problems, priorities and equipment capabilities when making decisions about which units to dispatch where. Even Supervising Public Safety Dispatcher Jim Seymour identified the role of the Battalion Chief as one of "coordinating with the Bureau of Field Operation "

The Union's position is adopted

		_____
	Jerilou H. Cossack	Date
	Chair	
<input type="checkbox"/> Concur		_____
<input checked="" type="checkbox"/> Dissent	City Panel Member Nora Frimann	Date
<input checked="" type="checkbox"/> Concur		_____
<input type="checkbox"/> Dissent	Union Panel Member Randy Sekany	Date

SUMMARY OF THE CHAIR

This has been a long and arduous process. While I know it is redundant, what must be emphasized here is that whereas the collective bargaining process envisions compromise and encourages innovation, the interest arbitration process does neither.

The parties in this dispute did not use the bargaining process to their advantage. There was precious little discussion between them about many of the proposals. It is axiomatic that there can be no meeting of the minds if there is no dialogue.

Although the Charter provides for issue-by-issue decisions, the result is a comprehensive agreement. Basic notions of equity and fairness require the balancing of compensation and benefits. It is not within the authority of the Arbitration Board to pick and choose various aspects of each party's proposal which the Board might find more palatable. In some cases the parties have overreached in one proposal in an effort to protect themselves from a possible adverse finding with respect to a different proposal.

The parties share a common interest. They share common problems. The biggest problem looming on the horizon is the ever-escalating cost of health care, which affects both current employees and retirees. Both parties should have an interest in addressing this vital area and, together, finding ways in which costs can be contained. Both the City and the Union's members

contribute to. Creative ways in which to structure and fund current and future benefits, such as the City-suggested trust for retiree medical benefits, must be explored.

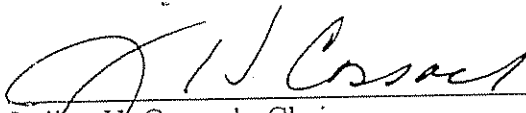
Respectfully submitted,

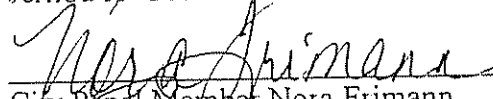
A handwritten signature in black ink, appearing to read "J. H. Cossack". The signature is fluid and cursive, with a large initial "J" and "H".


Jerilou H. Cossack
Arbitrator

Stipulation Regarding Delivery of Decision Pursuant to San Jose Charter Section 1111.

The parties agree that pursuant to section 1111, this decision was delivered to the parties on August 1, 2007.

 8/3/07
Jerilou H. Cossack, Chair

 8/3/07
City Panel Member Nora Frimann

 8/3/07
Union Panel Member Randy Sekany

